

**ABU-ALI ABDUR'RAHMAN, ET AL. vs. TONY PARKER, ET AL.**  
**Tony Parker on 06/05/2018**

1                   IN THE CHANCERY COURT  
2                   FOR THE STATE OF TENNESSEE  
3                   TWENTIETH JUDICIAL DISTRICT  
4                   DAVIDSON COUNTY, PART III

5                   ABU-ALI ABDUR'RAHMAN, et al.,         )  
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14                   DEPOSITION OF:  
15                   TONY PARKER  
16                   Taken on behalf of the Plaintiffs  
17                   June 5, 2018

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4      Rachel Ann Stephens, Intern  
5      Tenia Miles, Intern  
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1                   The deposition of TONY PARKER was  
2 taken by counsel for the Plaintiffs, on  
3 June 5, 2018, commencing at 9:30 a.m., in The  
4 Federal Public Defenders Office, 810  
5 Broadway, Suite 200, Nashville, Tennessee,  
6 for all purposes under the Tennessee Rules of  
7 Civil Procedure.

8                   The formalities as to notice,  
9 caption, certificate, et cetera, are not  
10 waived. All objections, except as to the  
11 form of the questions, are reserved to the  
12 hearing.

13                  It is agreed that Carissa L.  
14 Boone, being a Notary Public and Court  
15 Reporter, may swear the witness, and that the  
16 reading and signing of the completed  
17 deposition by the witness are not waived.

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1                           TONY PARKER,  
2 having been first duly sworn, was examined  
3 and testified as follows:

4                           EXAMINATION

5 BY MS. HENRY:

6 Q.         Good morning, Commissioner Parker.

7 We'll start by asking you to state your name  
8 and position on the record, please?

9 A.         Tony Parker, Commissioner of the  
10 Tennessee Department of Corrections.

11 Q.         Thank you, Commissioner Parker. My  
12 name is Kelley Henry, and I am lead counsel  
13 on behalf of the Plaintiffs in the case of  
14 Abu-Ali Abdur'Rahman versus Parker.

15                 I'm the Supervisor of the Capital  
16 Habeas Unit for the Federal Public Defenders  
17 Office, and we're in my conference room at  
18 810 Broadway this morning; is that correct?

19 A.         That's correct.

20 Q.         And we have not met before this  
21 morning; is that correct?

22 A.         That's correct.

23 Q.         Have you had your deposition taken  
24 before?

25 A.         I have.

1 Q. All right. I'm just going to go over,  
2 then, briefly, some of the ground rules for  
3 depositions and also talk about what the  
4 ground rules are specifically for today.

5 Is that all right?

6 A. Sure.

7 Q. Before I do that, I'd like to go ahead  
8 and introduce you to everyone here. But  
9 before I do that, I should note that we  
10 started at 9:30 on the dot as agreed with  
11 your counsel.

12 But seated next to me is  
13 Stephen Kissinger, and he's lead counsel for  
14 the East Tennessee Plaintiff and he's with  
15 the Federal Defenders Office in Knoxville.  
16 Next to him is Bradley Maclean, who is  
17 counsel for Abu-Ali Abdur'Rahman, and he's in  
18 private practice.

19 Over here we have Katherine Dix who is  
20 an Assistant Federal Defender in my office  
21 and is assisting me; Jerome Del Pino,  
22 Assistant Federal Defender, who is also  
23 assisting me from my office. Next to Jerome  
24 is Richard Tennent, another Assistant Federal  
25 Defender from my office. Next to him is

1 Amy Harwell, another Assistant Federal  
2 Defender from my office.

3 A. Okay.

4 Q. And they're all on my team.

5 And Kathleen Morris is counsel for  
6 Leroy Hall, and she's in private practice,  
7 pro bono. Mr. Maclean and Ms. Morris are pro  
8 bono lawyers.

9 Then we have Robert Mitchell with the  
10 Attorney General's Office. He's on your  
11 team.

12 A. Uh-huh.

13 Q. And we have Charlotte Davis and  
14 Scott Sutherland also with the AG's office.

15 Seated right behind me are three  
16 interns who are volunteering with us for the  
17 Summer. We have Rachel Ann Stephens,  
18 Erin Drake and Tenia Miles, all right?

19 A. Okay.

20 Q. It's possible that during the course  
21 of this deposition, my boss might check in on  
22 me to make sure I'm not embarrassing the  
23 family, as they say.

24 A. Uh-huh.

25 Q. His name is Henry Martin.

1 A. Okay.

2 Q. Other than that, I don't expect any  
3 other guests today, all right?

4 A. Okay.

5 Q. The Court has ordered that we have six  
6 hours today, which is maybe why I'm speaking  
7 a little quickly, and also because this is  
8 just preliminary stuff. But the six hours  
9 does not include breaks nor does it include  
10 lunch. I have my timer going and the court  
11 reporter's also keeping a record as well, all  
12 right?

13 A. All right.

14 Q. So, Mr. Parker, I'm going to start  
15 this morning by showing you a document.

16 MS. HENRY: I'm going to ask the  
17 court reporter to make this Exhibit A.

18 (Exhibit A was marked.)

19 BY MS. HENRY:

20 Q. Have you seen this document before?

21 A. Yes.

22 Q. All right. And do you recognize this  
23 document as a Notice of Deposition?

24 A. Yes.

25 Q. And are you here today pursuant to

1 that Notice of Deposition?

2 A. I am.

3 Q. All righty. The next thing I'd like  
4 to show you, Mr. Parker, I'll have the court  
5 reporter mark as Deposition Exhibit B.

6 (Exhibit B was marked.)

7 BY MS. HENRY:

8 Q. And I'll represent to you, Mr. Parker,  
9 that Deposition Exhibit B is the Court's  
10 order on a Motion to Compel your testimony  
11 that sets forth the parameters of the  
12 deposition.

13 Have you seen that document before?

14 A. I have.

15 Q. All right. And when did you see it?

16 A. Over the last couple of weeks.

17 Q. All right.

18 A. During different times.

19 Q. All right. So are you familiar with  
20 the contents of the document?

21 A. Yes.

22 Q. All right. We'll be following the  
23 parameters set forth by the Court in that  
24 order, which is Deposition Exhibit B. If  
25 during the course of the deposition, your

1 counsel has some objections, the Court has  
2 actually been kind enough to provide us with  
3 specific guidance on how to handle them. And  
4 that was in a subsequent order, which I'm  
5 going to have the court reporter mark as  
6 Deposition Exhibit C.

7 (Exhibit C was marked.)

8 BY MS. HENRY:

9 Q. And basically what that order says --  
10 and you can keep it in front of you, sir, if  
11 you need to refer to it -- is that during the  
12 course of the deposition, from time to time  
13 your lawyer might have some objections to  
14 questions I asked because I didn't ask them  
15 correctly or he doesn't like them or he  
16 doesn't like the way they sound. And he'll  
17 make those objections, but you'll be allowed  
18 to go ahead and answer the question. He's  
19 just preserving the record.

20 If he instructs you not to answer a  
21 question, because he believes it's in  
22 violation of the Court's order, which is our  
23 Deposition Exhibit B, then we'll ask those  
24 questions to be certified. And you are not  
25 to answer those questions.

1                   Is that clear?

2   A.       That's clear.

3   Q.       All right. That just keeps everybody  
4   rolling, so we know sometimes Mr. Sutherland  
5   might object. He'll say "Relevance, hearsay.  
6   Asked and answered," and that sort of thing.  
7   And you can go ahead and answer the question  
8   without me having to repeat it and without  
9   him having to reobject. It just moves things  
10   along a little quicker, okay?

11   A.       Okay.

12   Q.       Mr. Parker, let me ask you this  
13   morning, have you taken any medications that  
14   impact your ability to remember or answer  
15   questions clearly or hear questions?

16   A.       No, I have not.

17   Q.       Are you clearheaded and able to  
18   understand the questions I'm asking you so  
19   far this morning?

20   A.       Yes.

21   Q.       During the course of the deposition,  
22   there will be no trick questions. I'm not  
23   that clever. If I ask a question poorly,  
24   it's because it's poorly worded, and I will  
25   not be offended if you tell me it's poorly

1 worded, okay?

2 A. Okay.

3 Q. I'm not trying to confuse you, and I  
4 don't want you to be confused, all right?

5 A. Okay.

6 Q. What I want you to do is answer the  
7 question as, you know, fully as you need to.  
8 If it's a "yes" or "no," but you need to  
9 explain, I want you to explain, okay?

10 A. Absolutely.

11 Q. We want to understand your position  
12 and all the knowledge that you have, okay?

13 A. Okay.

14 Q. And do you understand that the parties  
15 will be relying on the truthfulness and  
16 completeness of your answers to prepare this  
17 case for court?

18 A. I do.

19 Q. And you understand that myself and my  
20 fellow lawyers are representing men who are  
21 under a sentence of death, correct?

22 A. That's correct.

23 Q. And so this is pretty important?

24 A. Absolutely.

25 Q. And so what we want to do today is

1 just get your honest answers. And if you say  
2 "uh-huh" "or huh-uh," I'm probably going to  
3 correct you. Not because I'm treating you  
4 like my 19-year-old son, but because I need  
5 to make sure the record reflects exactly what  
6 your answers are, okay?

7 A. Okay.

8 Q. So I'm -- I promise you I'm not trying  
9 to be rude or embarrass you.

10 A. That's fine.

11 Q. During the day, what my plan is, is to  
12 go for about an hour-and-15, hour-and-a-half,  
13 just whenever there's a natural break this  
14 morning. Then we'll also break, you know, at  
15 noon, 12:15, 12:30, natural breaking time for  
16 an hour lunch. We'll come back, have a short  
17 afternoon break, and we will complete within  
18 that six-hour time frame, okay?

19 A. Okay.

20 Q. Do you have any plans today that are  
21 going to interfere with that?

22 A. No.

23 Q. All right. Also, Commissioner Parker,  
24 should an emergency arise -- I know that  
25 you're an important man and there might be

1 something that happens -- we have arranged  
2 for you to have a private conference room on  
3 our first floor, that has a landline and  
4 privacy, okay?

5 A. Okay. Let's hope that don't [sic]  
6 happen.

7 Q. I hope it doesn't happen, either. But  
8 we wanted to make sure and have those  
9 contingencies taken care of.

10 A. Absolutely.

11 Q. All right?

12 A. Thank you.

13 Q. There's water and there are some  
14 snacks and there's coffee available. If --

15 A. Thank you.

16 Q. -- your blood sugar gets low, you  
17 know, please tell us. I don't control all  
18 the breaks. If you need to take a break, you  
19 just tell me and we'll do it, all right?

20 A. Absolutely.

21 Q. And if you need to take a smoke break,  
22 you can do that too, but you got to go --

23 A. Yeah.

24 Q. -- you know, several blocks away. So  
25 anyway, all right, we'll get started.

1                   Do you have any questions of me before  
2 we get started?

3 A.           I don't have any questions. No, thank  
4 you.

5 Q.           The next document I want to show you  
6 is kind of big.

7                   MS. HENRY: And I'll ask the court  
8 reporter to mark that as Deposition  
9 Exhibit D.

10                  (Exhibit D was marked.)

11                  THE WITNESS: Thank you.

12 BY MS. HENRY:

13 Q.           Sure.

14                  Do you recognize that document, sir?

15 A.           I do.

16 Q.           And what is that?

17 A.           That's the Complaint that was filed  
18 and our -- I'm assuming our responses to --

19 Q.           This -- I'll tell you --

20 A.           -- the action.

21 Q.           -- yeah, this is just the Complaint.

22 A.           Okay.

23 Q.           Do you recognize that?

24 A.           Yes.

25 Q.           So it contains 90 pages, and it has an

1 exhibit which is Exhibit A, the January 8th,  
2 2018 Lethal Injection Execution Manual,  
3 Execution Procedures for Lethal Injection,  
4 and Exhibit B, which is an e-mail dated  
5 September 7th, 2017.

6 You just look through there and see if  
7 that seems to be accurate.

8 A. (Witness reviews document.)

9 Seems to be. I'm not -- I don't see  
10 the e-mail, but that's okay. I'm sure it's  
11 here.

12 Q. If you flip over to the last page, the  
13 very last page --

14 A. Oh, I see.

15 Q. It's double-sided.

16 A. It's on the back side.

17 Q. Yes, sir.

18 A. Okay. All right.

19 Q. And so you've seen that document  
20 before?

21 A. Yes.

22 Q. When did you first see that document?

23 A. The -- which document are you talking  
24 about?

25 Q. I'm sorry, the Complaint.

1 A. Oh, weeks ago. I -- I don't remember  
2 the exact date, but I've seen it in the past.

3 Q. All right.

4 A. Yeah.

5 Q. And you know what? I skipped a whole  
6 section. I got excited about the Complaint,  
7 and I forgot to ask you about your  
8 background. Can you tell us -- you told us  
9 you're the Commissioner of the Department of  
10 Correction. How long have you held that  
11 position?

12 A. Approximately two years.

13 Q. All right. Before that, how were you  
14 employed?

15 A. I was the Assistant Commissioner of  
16 Prisons for the Department of Correction.

17 Q. And as the Assistant Commissioner of  
18 Prisons, what was your duty?

19 A. To oversee and supervise the Prison  
20 Operations division for the Department of  
21 Corrections.

22 Q. And when you were the Assistant  
23 Commissioner of Prisons, did you have any  
24 responsibilities with respect to lethal  
25 injection and executions?

1 A. I was -- I directly supervised the  
2 wardens of the facilities who -- and that  
3 includes the one at Riverbend, so, yes, I  
4 did.

5 Q. As the direct supervisor of the Warden  
6 at Riverbend, what was your specific role  
7 with respect to the Warden, regarding  
8 executions?

9 A. I -- kind of a -- I guess a dual role  
10 with the Commissioner over the Department who  
11 oversees the protocols and the administration  
12 of the lethal injection or executions in  
13 Tennessee. As me being the direct supervisor  
14 of the Warden, basically monitoring the  
15 execution trainings and things like that.

16 And from time to time, reviewing the  
17 protocols and the procedures for the  
18 executions in Tennessee.

19 Q. How long did you hold that position?

20 A. Approximately four years. I -- don't  
21 hold me to that, but that's an approximate  
22 number. I lose track of time as I get older  
23 every year.

24 Q. I hear that.

25 So during the time that you were the

1 Assistant Commissioner of Prisons, was that  
2 the time period when Tennessee changed their  
3 protocol from the three-drug protocol to a  
4 single-drug protocol involving the use of  
5 pentobarbital?

6 A. I'm not sure. I -- it could have  
7 been, but my -- I don't remember the exact  
8 dates, so could have been.

9 Q. So if I represent to you that it  
10 occurred in 2013, would that be the -- during  
11 the time frame that you were the Assistant  
12 Commissioner?

13 A. I was the Assistant Commissioner in  
14 2013, yes.

15 Q. Okay. I'm going to get back to your  
16 role as the Assistant Commissioner in just a  
17 minute. But prior to that position, how were  
18 you employed?

19 A. I was the Correctional Administrator  
20 for the West Region in the state.

21 Q. And what did you do as a Correctional  
22 Administrator for the West Region?

23 A. Again, I supervised Prison Operations  
24 for the facilities in the West Region,  
25 primarily Northwest Correctional Complex,

1       West Tennessee State Penitentiary, Mark  
2       Luttrell, Hardeman and Whiteville.

3       Q.       How long did you have that position?

4       A.       Approximately two years, I believe.

5       Q.       Did that position cause you to have  
6       any role with lethal injection executions?

7       A.       No.

8       Q.       And prior to that position, how were  
9       you employed?

10      A.       I was the Warden at two facilities in  
11       the West Region: Northwest Correctional  
12       Complex and West Tennessee State  
13       Penitentiary.

14      Q.       And how long did you hold those  
15       positions?

16      A.       Approximately eight years.

17      Q.       Prior to that, were you still with  
18       TDOC?

19      A.       I was.

20      Q.       And in what role?

21      A.       I was the Associate Warden of  
22       Operations at Northwest Correctional Complex  
23       -- I'm sorry. I was the Deputy Warden at  
24       Northwest Correctional Complex.

25      Q.       And I assume as Deputy Warden of

1 Northwest Correctional Complex, you didn't  
2 have anything to do with executions?

3 A. No.

4 Q. Did you have anything to do with  
5 executions in the state of Tennessee prior to  
6 assuming your role as the Associate  
7 Commissioner of Prisons [sic]?

8 A. Assistant, no.

9 Q. Assistant.

10 A. I did not.

11 Q. Okay. All right. So then we won't go  
12 through all of that. I'm going to ask you  
13 this sort of general question: Has your  
14 entire career been in correction?

15 A. It has.

16 Q. Has it always been with the Tennessee  
17 Department of Correction, or were you at  
18 another facility?

19 A. It's always been with the Tennessee  
20 Department of Corrections.

21 Q. And for how long?

22 A. Approximately 35 years.

23 Q. And what is your educational  
24 background, sir?

25 A. I have a Master's degree in Security

1      Studies from the Naval Postgraduate School.  
2      I have a Bachelor of Science in Criminal  
3      Justice from the University of Tennessee at  
4      Martin. And an Associate of Criminal Justice  
5      degree from Dyersburg State Community  
6      College.

7      Q.      Did you have to write a thesis for  
8      your master's degree?

9      A.      I did.

10     Q.      What was the topic?

11     A.      Prison radicalization in U.S. prisons.

12     Q.      Prison radicalization in U.S. prisons.

13     A.      Yes, basically establishing a  
14      deradicalization program for U.S. prisons.

15     Q.      And was it based on a model of another  
16      country?

17     A.      I studied two different countries  
18      really. Singapore and Saudi Arabia.

19     Q.      And do you endorse the Saudi Arabia  
20      model?

21     A.      I somewhat did. I think there's  
22      elements in -- in the Saudi model that we  
23      could use in Tennessee that would help us as  
24      far as trying to counter radicalization in  
25      our prisons.

1 Q. And you did that as part of the Navy,  
2 sir?

3 A. It was at the Naval Postgraduate  
4 School in Monterey, California.

5 Q. So were you in the Navy?

6 A. I was not in the Navy.

7 Q. I want to get back, if I might,  
8 Commissioner, to your role as the Assistant  
9 Commissioner of Prisons. Am I saying that  
10 right?

11 A. Yes.

12 Q. And you said during -- when you served  
13 in that role, part of your duties was to  
14 monitor execution training. "Monitor" could  
15 mean a lot of things. Can you tell me what  
16 "monitor" means to you?

17 A. As the -- again, basically as the  
18 Assistant Commissioner of Prisons, I would  
19 attend and observe the execution trainings at  
20 Riverbend and basically supervise the Warden  
21 in his daily activities at the facility.

22 Q. And so when you say "supervise the  
23 Warden," what does that mean in the context  
24 of an execution rehearsal? Would you tell  
25 him what to do? Did you provide him

1 training? Or did you just watch him do it?

2 A. I would say basically monitored the  
3 activity.

4 Q. Uh-huh.

5 A. If he had questions, of course I would  
6 have to answer questions. And that's  
7 basically it.

8 Q. Okay. And how did you prepare to  
9 carry out that role?

10 A. My preparation was really, I guess, to  
11 review the protocol, to keep the Commissioner  
12 informed of -- of activities, things like  
13 that.

14 Q. And so when you say "review the  
15 protocol," does that mean you read the  
16 protocol?

17 A. Yes.

18 Q. If you had questions about what the  
19 protocol meant, was there somebody you could  
20 ask?

21 A. There was.

22 Q. Okay. And who was that?

23 A. People on staff in the Department,  
24 different individuals, Commissioner.

25 Q. Uh-huh.

1 A. Legal staff, different individuals in  
2 the Department.

3 Q. Did you find that there was anyone in  
4 the Department who was particularly  
5 knowledgeable with any questions that you  
6 might have?

7 A. Well, I felt like the Legal team in  
8 the Department was very knowledgeable. The  
9 Commissioner was knowledgeable.

10 Q. Okay.

11 A. That's primarily it.

12 Q. During the time that you spent as the  
13 Assistant Commissioner of Prisons, did you  
14 have a role in obtaining lethal injection  
15 drugs for executions?

16 A. No. Not that I remember a particular  
17 role, no.

18 Q. Okay. Did you obtain knowledge about  
19 the Department's attempts to obtain execution  
20 drugs?

21 A. As Assistant Commissioner?

22 Q. Yes.

23 A. I would say that -- again, it's been a  
24 while. I'm trying to recall.

25 I -- I would say that I was

1      knowledgeable of the fact that it had become  
2      a challenge to obtain lethal injection  
3      chemicals across -- not only in Tennessee,  
4      but in other states also.

5      Q.      Were you aware of the efforts that the  
6      Department engaged in, in terms of obtaining  
7      an individual who was willing to compound  
8      pentobarbital?

9      A.      Not specifically at the time I was  
10     Assistant Commissioner.

11     Q.      Okay.

12     A.      Those would have probably been  
13     conversations that -- at the Department level  
14     that I would probably not have been directly  
15     involved in at that time.

16     Q.      Those are -- that's information you've  
17     learned subsequent to your role as  
18     Commissioner?

19     A.      Yes. It's -- it's information that,  
20     as my role as Commissioner would require me  
21     to be -- I guess ask more direct questions  
22     regarding the availability and the -- the  
23     search and the attempts to find lethal  
24     injection chemicals.

25     Q.      I'm going to ask you some questions

1 about your monitoring of the lethal injection  
2 rehearsals during the time that you were  
3 Assistant Commissioner of Warden [sic]. But  
4 I want to preface those questions with the  
5 following provision: If I ask a question  
6 that seems to require you to name individuals  
7 who participated in those rehearsals, I'm not  
8 asking for that information. And we do not  
9 want you to provide that; is that okay?

10 A. Well, that's okay.

11 Q. Okay. So as an individual who was  
12 charged with supervising and monitoring those  
13 practice sessions, did you supervise and  
14 monitor the person who served the role of  
15 executioner as they would push the chemicals  
16 into the line?

17 A. Let me -- let me clarify one thing.

18 Q. Sure.

19 A. My role as Assistant Commissioner, I  
20 just want to make sure you understand, was --  
21 I did not have a direct responsibility to  
22 monitor every rehearsal that took place --

23 Q. Okay.

24 A. -- as part of that process that they  
25 do monthly. I -- I was not there at every

1 single rehearsal. In regards to my direct  
2 supervision of the individual who is the  
3 Executioner who pushes the drug, I'm aware of  
4 that procedure, I'm aware of the individual  
5 who does that and the process, but as far as  
6 directly supervising that individual, no, I'm  
7 not.

8 Q. Okay.

9 A. Although, as the Commissioner, I am  
10 responsible for the overall management and  
11 the carrying out of legal executions in  
12 Tennessee.

13 Q. Sure. As you -- well, how many  
14 rehearsal sessions would you say you  
15 attended? Can you estimate?

16 A. Attended as Assistant Commissioner --

17 Q. Yes, sir.

18 A. -- or in total?

19 Q. As Assistant Commissioner.

20 A. I would -- several. I don't know the  
21 exact number.

22 Q. More than a dozen?

23 A. Oh, I'm sure more than a dozen, yes.

24 Q. During those rehearsal sessions that  
25 you attended as Assistant Commissioner, were

1 you ever in a position to be in the same room  
2 with the individual who serves the role as  
3 executioner while he or she was pushing the  
4 chemicals?

5 A. Not that I recall.

6 Q. And I should clarify. When I say  
7 "chemicals," during the rehearsal sessions,  
8 you-all use saline; is that correct?

9 A. That's correct.

10 Q. And is it your understanding that  
11 basically saline is an adequate substitute  
12 for what it would be like in an actual  
13 execution?

14 A. Yes.

15 Q. There's not really any substantive  
16 difference in terms of the speed in which you  
17 deliver the chemicals, whether it's saline or  
18 pentaobarbital or midazolam; is that your --

19 A. Not that I'm aware of.

20 Q. Okay. What sorts of questions would  
21 be brought to you when you were Assistant  
22 Commissioner of Prisons?

23 A. From who?

24 Q. During an execution rehearsal. What  
25 sorts of questions would you be asked?

1 A. You know, very seldom was I asked  
2 questions.

3 Q. Uh-huh.

4 A. So, you know, just right now, I can't  
5 remember the exact questions that I would  
6 have been asked. It would have been general  
7 questions, I'm assuming, regarding protocol  
8 or simple questions regarding notification.  
9 But not anything specific that I can recall  
10 right now.

11 Q. All right. I want to talk with you  
12 now about your role as Commissioner of  
13 Correction if I might. Can you tell me, as  
14 Commissioner of Correction, what are your  
15 overall responsibilities?

16 A. My overall responsibility is to  
17 basically oversee the operations of the  
18 Tennessee Department of Corrections, all  
19 divisions, ensure that -- with the assistance  
20 of my staff, that we operate facilities  
21 according to law and by policy and procedure  
22 and that -- among many other things, but  
23 that's generally my responsibility.

24 Q. How many employees do you supervise --  
25 or are you responsible for, I should say?

1 A. The Department has 6,400-plus  
2 employees.

3 Q. And how many inmates are you charged  
4 with the safety and security of?

5 A. We have approximately 22,000, 22- to  
6 23,000 offenders incarcerated. That doesn't  
7 include the number of offenders that are in  
8 local jails, plus about 78,000 offenders,  
9 give or take a few, in the community under  
10 Probation and Parole.

11 Q. And Probation and Parole also is under  
12 your umbrella; is that correct?

13 A. The supervision of Probation and  
14 Parole, yes. Well, I do not supervise the  
15 Board of Probation and Parole, but I -- the  
16 officers of -- Probation and Parole officers  
17 for the State of Tennessee and the Community  
18 Supervision section is under the Department's  
19 responsibility.

20 Q. How many facilities are you  
21 responsible for the orderly running of?

22 A. We have 14 facilities in the state.

23 Q. All right.

24 A. Ten are operated by the State of  
25 Tennessee. One is contracted directly with a

1 private entity, CoreCivic. And we have three  
2 contracted through the County that CoreCivic  
3 operates through the County.

4 Q. What is your role in government? Are  
5 you part of the executive branch?

6 A. I am.

7 Q. Do you have a cabinet-level position?

8 A. I do.

9 Q. So do you report directly to the  
10 Governor?

11 A. I report directly to the Governor and  
12 the Chief Operations Officer for the State,  
13 Mr. Greg Adams.

14 Q. Greg Adams?

15 A. (Witness moves head up and down.)

16 Q. I'm sorry. Is that a "yes"?

17 A. Yes.

18 Q. Okay. And I would expect as a member  
19 of the cabinet and somebody who's in charge  
20 of all of these thousands of employees and  
21 tens of thousands of inmates, that you find a  
22 need to delegate quite a bit of your  
23 responsibilities; is that fair to say?

24 A. There -- yes, that's fair.

25 Q. And when -- who in the Department --

1 let me strike that question.

2 Is there anyone in the Department who  
3 serves a role that assists you with  
4 implementing executions?

5 A. Well, of course the Warden of the  
6 facility and other staff in the Central  
7 Office. You know, executive staff within the  
8 Department.

9 Q. And is there, for example, an  
10 Assistant Commissioner of Prisons right now?

11 A. There is.

12 Q. And who is that?

13 A. His name is David Sexton. /

14 Q. Does Mr. Sexton serve the same role  
15 that you did when you were the Assistant  
16 Commissioner of Correction?

17 A. His responsibilities are pretty much  
18 the same.

19 Q. So does he attend -- periodically  
20 attend the monthly rehearsal sessions?

21 A. To my knowledge, yes, he does.

22 Q. Has he received training on the  
23 implementation of lethal injection protocols?

24 A. He has. Yes, he has.

25 Q. And where did he receive that

1 training?

2 A. I'm not sure. He's reviewed the --  
3 when I said training, let me -- let me make  
4 sure I clarify that.

5 Q. Sure.

6 A. He has been involved in the protocol  
7 review process. As far as any specific  
8 training regarding the delivery of lethal  
9 injection drugs, I'm not aware of any  
10 specific training regarding that element.

11 Q. Well, thank you for that  
12 clarification.

13 Can you tell me what the protocol  
14 review process is?

15 A. The protocol review process?

16 Q. Yes.

17 A. It's what we do annually. The  
18 protocols are reviewed annually. And the  
19 Warden assembles the team there at the  
20 facility, too, and they review the protocols  
21 from time to time.

22 Q. Is there a written report when they  
23 review the protocol?

24 A. I'm not sure.

25 Q. Once the protocol is reviewed, are you

1 verbally given a report on the results of the  
2 protocol review?

3 A. As Commissioner?

4 Q. Yes.

5 A. Not always.

6 Q. What is the -- when there's a review,  
7 what are they looking at?

8 A. Well there's-- so there's -- there  
9 would be two, right? I mean, so if you have  
10 your annual -- or you review the protocol --  
11 and there's a team that's -- that does that  
12 in conjunction with the Warden and the  
13 Department staff that reviews the protocol.

14 But as far as when you prepare for an  
15 execution, time leading up to executions, the  
16 Warden also would go over the protocol. And  
17 the Execution Team would review that protocol  
18 also.

19 Q. Okay. So there's two different review  
20 processes. One is just --

21 A. What I would classify as two different  
22 reviews, yes.

23 Q. Okay. So there's an annual process  
24 that the Warden is engaged in and the Warden  
25 picks his team -- don't tell me who they are.

1     But he picks his team; is that correct?  
2     A.       Well, I think it's the -- the protocol  
3       for the Department of Corrections for  
4       executions would be reviewed not only at the  
5       Warden's level but at the Department's level  
6       to see if there's any necessary changes,  
7       modifications. That's done. And then, I  
8       guess, again, a refresher for the people who  
9       are directly involved in the execution  
10      process.

11    Q.       And what sorts of things would you be  
12      looking for to determine whether there needs  
13      to be a change in the protocol or a revision?

14    A.       At -- at my level?

15    Q.       Or at the Warden's review level. When  
16      he's conducting those annual reviews, what  
17      sorts of things is he concerned --

18    A.       Well, again, let me make sure I'm  
19      clear.

20    Q.       Sure.

21    A.       The annual review process and our  
22      annual review of these protocols would be  
23      more at the executive level to include the  
24      Warden.

25    Q.       Okay.

1 A. But it would be a review of -- a  
2 departmental review to ensure that you were  
3 -- the protocol was current with any changes  
4 in statute or any changes in the protocol  
5 that needed to be made.

6 Q. And what would cause you at the  
7 executive level to determine that there's a  
8 change in the protocol that needs to be made?

9 A. Either my knowledge or my staff's  
10 knowledge of any kind of changes that might  
11 be necessary. I mean, it could -- there's  
12 different things that could trigger that.  
13 Obviously a change in the legislature or a  
14 law or many other things.

15 Q. As Commissioner of Correction, do you  
16 -- and without telling me who -- but do you  
17 consult with other individuals from various  
18 states who serve at your level who are also  
19 Commissioners of Corrections who are  
20 responsible for executions?

21 A. I do.

22 Q. Could they provide you information  
23 from their experience that might cause you to  
24 need to revise the protocol?

25 A. Well, they could provide me

1 information. And I guess it's possible --

2 Q. Uh-huh.

3 A. -- that could happen.

4 Q. Okay. When these annual reviews  
5 occur, do you -- what sorts of materials do  
6 you review? Is it just the protocol in the  
7 statute, or do you obtain literature or news  
8 articles about other executions and factor  
9 that into that consideration in your annual  
10 review?

11 A. I think we consider all information  
12 that's available.

13 Q. And how would the public know what  
14 information was available to you?

15 MR. SUTHERLAND: I'm going to  
16 object to the form of the question. He's not  
17 qualified to answer how the public would....

18 THE WITNESS: I -- I don't really  
19 know. I mean, I -- a lot of the information  
20 that I would see, have available to me, I'm  
21 assuming would be available to the public.

22 So, I mean....

23 BY MS. HENRY:

24 Q. So --

25 A. I don't -- I don't -- just -- I don't

1 do a report that goes out to the public of  
2 how the -- how the review process is done or  
3 anything like that, that I'm aware of. But  
4 if that helps -- if that answers your  
5 question.

6 Q. Sure. Were you on the 2007 committee  
7 that reviewed the lethal injection protocol,  
8 Commissioner Little's committee?

9 A. I was not.

10 Q. And there was a committee report that  
11 came out of that; is that correct?

12 A. I believe so.

13 Q. Have you read that?

14 A. I don't remember reading it entirely,  
15 no.

16 Q. Would you have access to that as  
17 Commissioner of Correction?

18 A. I probably would.

19 Q. And certainly individuals who have  
20 worked for you for a number of years would  
21 have access to that; is that correct?

22 A. I'm assuming they would.

23 Q. And if I tell you that it's publicly  
24 known and, in fact, she's testified to the  
25 fact that she served on the committee, that

1 Debra Inglis sat on that committee and is  
2 aware of that information, she would be able  
3 to make that information available to you; is  
4 that correct?

5 A. Yes.

6 Q. And who is Debra Inglis?

7 A. She's the Chief Legal Counsel for the  
8 Department and the assistant -- Deputy  
9 Commissioner for the --

10 Q. And your counsel has interposed an  
11 objection of what the public has a right to  
12 know and what the public doesn't. So I want  
13 to go into that a little more.

14 MR. SUTHERLAND: Wait a minute.

15 Let me clarify that. I didn't say that they  
16 have a right to know. Your question was:  
17 How would the public get access? And I'm  
18 saying he's --

19 BY MS. HENRY:

20 Q. And I want to get into that, how the  
21 public would get access to the --

22 MR. SUTHERLAND: If he knows.

23 BY MS. HENRY:

24 Q. -- Department of Correction records.  
25 So let me ask you a couple of background

1       questions, okay?

2                  You stated that you hold a position at  
3       the executive department level; is that  
4       correct?

5   A.       That's correct.

6   Q.       And you are appointed by the Governor;  
7       is that correct?

8   A.       That's correct.

9   Q.       And that makes you a State employee;  
10      is that correct?

11     A.       That's correct.

12   Q.       And you run a Department of Correction  
13      that maintains a number of records, some of  
14      which are confidential and some of which are  
15      subject to public review; is that correct?

16     A.       That's correct.

17   Q.       And the Department of Correction gets  
18      a number of Tennessee Public Record Act  
19      Requests; is that correct?

20     A.       That's correct.

21   Q.       And the Department gets a number of  
22      records requests regarding materials that the  
23      Department has reviewed in crafting lethal  
24      injection protocols; is that correct?

25     A.       I -- if they ask for a Public Records

1 Request I'm assuming so, yes.

2 Q. And if someone asks for a Public  
3 Records Request, where does that request go?

4 A. It goes to the Legal division of the  
5 Department.

6 Q. And so have you delegated to the Legal  
7 division of the Department the duties of the  
8 Department in terms of responding to Public  
9 Records Requests?

10 A. Yes. They're -- they primarily have  
11 the responsibility for that function, yes.

12 Q. Do you review every public records  
13 response that goes from the Department?

14 A. No.

15 Q. Have you ever been consulted on  
16 whether you -- certain documents should or  
17 should not be disclosed in the response to a  
18 Public Records Request regarding executions?

19 A. Clarify your question.

20 Q. Has Ms. Inglis, for example, just as  
21 an example, come to you and said: "I've  
22 gotten this Tennessee Public Records Acts  
23 Request asking for these materials about  
24 executions in Tennessee. Is this document  
25 something I can turn over, or is it

1 confidential? "

2 A. No, Ms. -- the Legal division makes  
3 that decision based on law. They -- I don't  
4 recall her ever coming to me saying: "We  
5 have this Public Records Request. Do you or  
6 do you not want me to turn this over?" No.

7 Q. And while we're on the topic of Public  
8 Records Request, just so I don't forget, I'm  
9 going to show you a couple of documents.

10 MS. HENRY: Are we on E?

11 THE COURT REPORTER: E.

12 BY MS. HENRY:

13 Q. I'm going to show you, Mr. Parker,  
14 what I'm going to ask the court reporter to  
15 mark as Deposition Exhibit E.

16 (Exhibit E was marked.)

17 MR. SUTHERLAND: Do you have one  
18 for me?

19 MS. HENRY: I'm sorry. There you  
20 go, Mr. Sutherland (tendering).

21 BY MS. HENRY:

22 Q. I've handed you, Mr. Parker -- or  
23 Commissioner Parker, Deposition Exhibit E,  
24 which is a letter addressed to you, Mr. Mays  
25 and Ms. Inglis, dated April 3rd, 2018. And

1 it is -- does not have my signature, but I'll  
2 represent to you the copy that was sent to  
3 you did, and my paralegal, Janet Santana.  
4 This is a Tennessee Public Records Act  
5 Request sent April 3, 2018. Have you ever  
6 seen that letter?

7 A. I may have. I don't specifically  
8 recall.

9 Q. If I tell you, Commissioner Parker --  
10 let me ask you this, Commissioner Parker: Do  
11 you know how long the Department has to  
12 respond to a Public Records Act Request?

13 A. I do not.

14 Q. I want to show you, sir, what I'm  
15 going to ask the court reporter to mark as  
16 Deposition Exhibit F.

17 (Exhibit F was marked.)

18 BY MS. HENRY:

19 Q. And, sir, I've provided you with a  
20 copy of a statute, which is Tennessee Code  
21 Annotated Section 10-7-503, which is the  
22 Tennessee Public Records Act and I would  
23 direct your attention to Subparagraph  
24 Little A, Numeral 2, Large A and Large -- I'm  
25 sorry, Large B, where it says: The custodian

1 of public records or the custodian's designee  
2 shall promptly make available for inspection  
3 any public record not specifically exempt  
4 from disclosure. In the event it is not  
5 practical for the record to be promptly  
6 available for the inspection, the custodian  
7 shall, within seven business days -- Sub  
8 Little Roman I, make the information  
9 available to the responder, Little Roman II,  
10 deny the request, et cetera.

11 So would you agree with me, sir, that  
12 the statute requires a response of some sort  
13 within seven days?

14 A. I would.

15 Q. If I tell you, sir, that the April 3rd  
16 Tennessee Public Records Act Request which  
17 was sent to you, Mr. Mays and Ms. Inglis has  
18 not been responded to, can you explain to me  
19 the reason for the delay?

20 A. I cannot.

21 Q. Is the person who could tell me the  
22 reason for the delay Ms. Inglis?

23 A. I'm assuming she would probably have a  
24 better response than I'm able to give you.

25 Q. Thank you, sir.

1                   I'm next going to show you a document  
2   I'm going to ask the court reporter to mark  
3   as Deposition Exhibit G.

4                   (Exhibit G was marked.)

5   BY MS. HENRY:

6   Q.       And that, sir, is a letter dated  
7   May the 4th of 2018. Again, addressed to  
8   you, Mr. Mays and Ms. Inglis, and it is an  
9   identical letter which was sent by me and  
10   Ms. Santana on May 4th, 2018.

11                  Have you seen that letter?

12   A.       I don't recall seeing it. I may have.

13   Q.       And you would affirm with me, sir,  
14   that as we sit here today on June 5, 2018,  
15   that's more than seven days since May 4th,  
16   2017; is that correct?

17   A.       That's correct.

18   Q.       And do you have any reason as to why  
19   this letter has gone unresponded to?

20   A.       I do not.

21   Q.       Did you direct Ms. Inglis to withhold  
22   responses to our letter?

23   A.       I did not.

24   Q.       Would Ms. Inglis be in the best  
25   position to explain why these letters have

1 gone unanswered?

2 A. She would have a better answer than I  
3 would have, probably.

4 Q. Would you object, Mr. Parker, to going  
5 back to the Department today and asking  
6 Ms. Inglis to please respond to the letters  
7 which I've shown you as Exhibits E and G?

8 A. I would certainly be willing to  
9 inquire of General Counsel what the issue  
10 was, assuming that we haven't responded, to  
11 find out why, why we haven't responded.

12 Q. Thank you.

13 And you would agree, sir, that if I  
14 tell you I live in Nashville, Tennessee --

15 MR. SUTHERLAND: Objection to the  
16 leading.

17 BY MS. HENRY:

18 Q. -- if I live in Nashville, Tennessee,  
19 Davidson County, that I'm a citizen of the  
20 state of Tennessee?

21 A. I would agree to that, yes.

22 Q. All right. And my clients are  
23 citizens of the state of Tennessee, aren't  
24 they?

25 A. Yes.

1 Q. And citizens of the state of Tennessee  
2 have the right to public records; is that  
3 correct?

4 A. That's correct.

5 Q. And the materials considered by the  
6 Protocol Review Committee, would those  
7 materials be public records?

8 A. Restate the question, I'm sorry.

9 Q. Any materials that you consider in  
10 your annual protocol review process, would  
11 those materials be subject to a Tennessee  
12 Public Records Act Request?

13 A. I'm assuming that parts of it would.

14 Q. And what parts wouldn't be?

15 A. The parts that reveal identity of  
16 individuals, the parts regarding the security  
17 protocols for the facility and the security  
18 operations of the protocol, things like that.

19 Q. And when you say "security," you're  
20 talking about, for example, on the evening of  
21 the execution, what security procedures are  
22 put in place to make sure that everyone  
23 involved in the process is safe; is that --

24 A. Yeah, that. And the -- the different  
25 security protocols for the inside of the

1 facility as far as access to areas, things  
2 like that.

3 Q. All right. So other than those  
4 portions of the materials reviewed, which are  
5 subject to the Public Records Act exclusion,  
6 because they're confidential and the security  
7 materials, any other materials considered by  
8 you would be subject to a Tennessee Public  
9 Records Act Request by a citizen of the state  
10 of Tennessee?

11 A. To the best of my knowledge, yes.

12 Q. I will let you go ahead and keep  
13 Exhibit D handy, and I'm going to show you  
14 now a document that I will ask the court  
15 reporter to give the next letter.

16 MS. HENRY: Which I believe is H?

17 THE COURT REPORTER: Correct.

18 (Exhibit H was marked.)

19 BY MS. HENRY:

20 Q. I'll ask you, Mr. Parker, have you  
21 seen Deposition Exhibit No. -- Letter H  
22 before?

23 A. I have.

24 Q. And when did you see it?

25 A. Several times. Over the last three or

1 four weeks, probably, several times. I don't  
2 -- I don't remember specific dates, things  
3 like that, but....

4 Q. So this Defendant's Answer to the  
5 Complaint, Amended Complaint, will you agree  
6 with me that it has paragraph numbers?

7 A. Yes.

8 Q. And next to the paragraph numbers,  
9 there are answers that say things like:  
10 "Admit" or "Deny;" is that correct?

11 A. Yes.

12 Q. Did you have any input as to whether  
13 certain paragraphs should be admitted or  
14 denied?

15 A. I did. I -- my discussion with my  
16 staff in regards to answering this, the Legal  
17 team, so, yes, I did have input.

18 Q. All right. And when you say "the  
19 Legal team," are you referring to  
20 Mr. Sutherland, Ms. Davis and Mr. Mitchell,  
21 or are you referring to Ms. Inglis and the  
22 Department of General Counsel?

23 A. I'm referring to the Department's  
24 Legal team.

25 Q. Okay. And that's the General

1 Counsel's office?

2 A. Yes.

3 Q. Okay. It's a little confusing because  
4 you're represented here by the State Attorney  
5 General's Office.

6 A. Uh-huh.

7 Q. So I want to make sure when you say  
8 "Legal team" you're referring to Ms. Inglis  
9 and Department of General Counsel?

10 A. Yes.

11 Q. All right. So you have specific  
12 knowledge to -- as to the materials or the  
13 answers provided in Defendant's answer?

14 A. In some -- in some of them, I do. And  
15 some of them, I do not.

16 Q. Okay. And can you broadly categorize  
17 those answers of which you do have knowledge  
18 -- personal knowledge?

19 MR. SUTHERLAND: I'm going to  
20 object to the form of the question.

21 I think you'd have to ask him if  
22 he knows.

23 THE WITNESS: There -- there are  
24 specific questions that would relate to  
25 things that I have personal knowledge about

1 in this -- in this document. And then  
2 there's some that, just as an example, would  
3 require a medical opinion that I would not  
4 have. So that's as general as basically I  
5 can put it.

6 BY MS. HENRY:

7 Q. Great. Thanks.

8 And that's what I'm trying to get at  
9 so that we can maybe -- I'm not going to ask  
10 you questions --

11 A. Sure.

12 Q. -- about things that require expert  
13 opinions. But I think I'm hearing you say  
14 that you do have personal knowledge with  
15 respect to basic facts about the execution  
16 protocol and allegations regarding the  
17 protocol itself?

18 A. Yes.

19 Q. Am I hearing you right?

20 A. Yes.

21 Q. And so you would have been able to  
22 provide that information so that it got into  
23 this document so that we could understand the  
24 Department's position; is that correct?

25 A. Yes.

1 Q. Okay. We'll get back to your answer  
2 again. I just kind of wanted to be clear on  
3 that.

4 With respect to Deposition Exhibit D,  
5 which is the Amended Complaint, there was an  
6 original Complaint filed on February 20th of  
7 2018. And a hand-delivered copy of that and  
8 the summons was delivered to your office.

9 Did you receive that copy on February 20th of  
10 2018?

11 A. I may have. I don't specifically  
12 remember receiving it.

13 Q. Okay. When did you first become  
14 engaged with the facts as they were pled in  
15 the Complaint?

16 A. I don't remember a specific date or  
17 time and place. As you can imagine, I have a  
18 lot of things go on every day.

19 Q. Yes.

20 A. I -- I remember the Complaint. I  
21 remember vaguely speaking to the Legal team  
22 and giving responses. But I don't -- I  
23 couldn't give you a date or time, a specific  
24 time.

25 Q. Okay. And is dealing with the

1 substance of the Complaint and how an  
2 individual -- or how you were going -- strike  
3 that question. It's a bad question.

4           What role has General Counsel's Office  
5 played as far as answering the Complaint that  
6 was filed?

7 A.       I think assisting the Commissioner in  
8 the response. In some cases, talking about  
9 things that we have done in regards to the  
10 execution process, steps that had been taken  
11 sometimes to discuss with me things --

12           MR. SUTHERLAND: Let me stop you  
13 there. We're getting -- you're getting to  
14 attorney/client.

15           MS. HENRY: I'm trying to figure  
16 out what is and what isn't attorney/client.  
17 That's the reason for asking the question.

18 BY MS. HENRY:

19 Q.       I really don't want to get into  
20 attorney/client. I'm trying -- as the Court  
21 has ruled, Commissioner, there are some  
22 things that are attorney/client that the  
23 General Counsel does and there are some  
24 things that aren't. So I am just sort of  
25 asking you to give me a broad brush and not

1       the specifics. And then we'll figure out  
2       whether we can delve further, okay?

3                  Does that make sense?

4   A.       Not really.

5   Q.       Does that address your concern?

6   A.       So --

7   Q.       I appreciate that answer.

8   A.       So here -- again, assisting the  
9       Commissioner with my review of the Complaint  
10      and my answers, in some cases helping me  
11      remember, because my memory is terrible. I  
12      have a terrible memory sometimes. And I --  
13      helping me remember things that --  
14      conversations or information to do the best  
15      job I can at answering the Complaint.

16   Q.       All right.

17   A.       I hope that helps.

18   Q.       It does. Thank you.

19                  And because this is a timed  
20      deposition, I'm going to move on. And if I  
21      have time, I might move back --

22   A.       Okay.

23   Q.       -- to this, okay?

24                  I want to move on to some  
25      interrogatories because that's going to get

1 us to the -- the protocol itself. I'm going  
2 to show you, Commissioner Parker, a document  
3 that I would ask to be marked as Exhibit I.  
4 And that is the Plaintiffs' First Request for  
5 Production of Documents.

6 (Exhibit I was marked.)

7 BY MS. HENRY:

8 Q. Have you ever seen that document  
9 before?

10 A. I may have. I don't specifically  
11 remember seeing it.

12 Q. And this, Commissioner Parker, I will  
13 represent to you, was delivered along with  
14 our summons on February the 20th, and  
15 requests the Department, you, and -- and  
16 Mr. Mays and anyone else in the Department  
17 who may be an unnamed party, to provide  
18 information relating to and/or reflecting on  
19 TDOC's January 8th, 2018 lethal injection  
20 protocol and any amendments thereto.

21 Do you see that there in the first  
22 paragraph?

23 A. I do.

24 Q. And so we asked you to produce certain  
25 documents; is that correct?

1 A. It -- it's -- that's correct.

2 Q. Did you have any role in putting  
3 together the documents that were ultimately  
4 produced in response to that request --  
5 initially produced in response to that  
6 request?

7 A. My role, other than turning over any  
8 information I would have regarding the  
9 request to the officials at the Department --  
10 that would have been it. I remember looking  
11 and checking my documents and my e-mails and  
12 things like that for documents.

13 Q. You recall specifically checking your  
14 e-mails?

15 A. I remember checking the -- doing the  
16 search and checking the data, yes. I -- I  
17 don't remember -- I don't remember the  
18 specifics of what I found, if anything --

19 Q. Okay.

20 A. -- but it -- that would have been  
21 turned over to the Legal team or the  
22 Department.

23 Q. I'm going to show you a document that  
24 I will ask the court reporter to mark as  
25 Exhibit J.

1 (Exhibit J was marked.)

2 MS. HENRY: And, I'm sorry,

3 Mr. Sutherland, I don't have a copy for you.

4 MR. SUTHERLAND: I'll just scooch  
5 over here.

6 BY MS. HENRY:

7 Q. Commissioner Parker, I've handed you a  
8 document that is titled Defendant's Response  
9 to Plaintiffs' Request for Production of  
10 Documents. And it is Letter J.

11 A. Okay.

12 Q. Do you see that there?

13 A. I do.

14 Q. Have you seen that document before?

15 A. I may have. I don't specifically  
16 recall.

17 Q. And if you would take a moment, sir,  
18 to review the attachment to Exhibit J.

19 A. (Witness reviews document.) Okay.

20 Q. Does the attachment to Exhibit J  
21 appear to be the Lethal Injection Execution  
22 Manual, Execution Procedures For Lethal  
23 Injection?

24 A. It does.

25 Q. And is that the revision that is

1     January 8th, 2018?

2     A.       It is.

3     Q.       And does that -- is that document 112  
4        pages in length?

5     A.       (Witness reviews documents.)

6           Yes.

7     Q.       And does that document appear to be  
8        the same document which is as Attachment A to  
9        the Amended Complaint, which is -- the  
10      Amended Complaint is Deposition Exhibit D?

11    A.       Uh-huh, it appears to be, yes.

12    Q.       So in response to our Request for  
13      Production of Documents, you provided us a  
14      copy of the Lethal Injection Manual, which we  
15      had already attached as an attachment to our  
16      Complaint; is that correct?

17    A.       Uh-huh, that's correct.

18    Q.       And that Request for Production of  
19      Documents -- or that response to our Request  
20      for Production of Documents is dated  
21      April 6th, 2018; is that correct?

22    A.       What's dated April? I'm sorry. I  
23      missed your question.

24    Q.       Sure. If you'll turn to Page 3 of  
25      Exhibit J --

1 A. Uh-huh.

2 Q. -- for the Certificate of Service.

3 A. (Witness complies.)

4 Q. Do you see there that the document is

5 dated April the 6th, 2018?

6 A. (Witness reviews documents.)

7 Q. The page before that.

8 A. This page (indicating)?

9 Q. Yes.

10 A. I do, uh-huh.

11 Q. All right. So on April the 6th, 2018,

12 in response to our Request for Production of

13 Documents regarding the January 8th, 2018

14 protocol, the only documents provided to

15 Plaintiffs' counsel was a copy of the Lethal

16 Injection Manual that we already had; is that

17 correct?

18 A. That's correct.

19 Q. As we refer to this manual throughout

20 today's execution [sic], can we agree that

21 the word "manual" or "protocol" is

22 synonymous?

23 A. Yes.

24 Q. So if you or I say "manual" or we say

25 "protocol," we agree that we are talking

1 about this same January 8th, 2018 document;  
2 is that correct?

3 A. That's correct.

4 Q. At no time today will I be asking you  
5 about the electrocution protocol, okay?

6 A. Okay.

7 Q. And that's because I would be  
8 prohibited from doing so, and Mr. Sutherland  
9 would object vociferously, okay?

10 MR. SUTHERLAND: I don't know  
11 about vociferously.

12 BY MS. HENRY:

13 Q. It's not because I don't want to.

14 A. All right.

15 Q. All right. So when we talk about this  
16 manual, if we could look at Page 1 of the  
17 manual.

18 A. (Witness complies.)

19 Q. And the first sentence states: "This  
20 manual contains a summary of the most  
21 significant events and departmental  
22 procedures to be followed in the process of  
23 carrying out the orders of the Tennessee  
24 Supreme Court regarding the imposition of  
25 death by lethal injection."

1                   What do you mean by "summary"?

2   A.        I think that it's basically a -- well,  
3       a summation. I -- I don't know to say it  
4       without saying summary again. A summation of  
5       things that occur during the process of  
6       carrying out lethal injection.

7   Q.        I want you to turn --

8   A.        And let me just say that I -- when I  
9       say "summary" or -- or "summation," it's not  
10      -- it's obvious that it's not going to be  
11      all-inclusive of every single thing that  
12      occurs, but I think it's a best attempt at  
13      providing a manual that describes the  
14      process.

15   Q.        So let me see if I'm hearing you  
16      correctly. And so -- I don't want to  
17      misunderstand. I -- I think you're using  
18      "summary" the way that I understand  
19      "summary," but I just want to make sure that  
20      we're on the same page. What you're saying  
21      to me is that there are things that you're  
22      going -- and when I say "you," I mean the  
23      Department, the individuals involved with the  
24      execution. There are steps that must be  
25      taken in every lethal injection, and you

1 can't write everything down?

2 A. True.

3 Q. And so you've put together --

4 A. Well, I don't know that you can't, but  
5 we -- we -- we have not, but, yes.

6 Q. Okay. So this is not -- this written  
7 document is not every single thing that's  
8 done in an execution, but it's a summary?

9 A. I think it's, again, the most  
10 significant events that occur.

11 Q. All right. The next sentence there,  
12 sir, states: "It contains a detailed listing  
13 of some of the duties and responsibilities of  
14 certain key departmental personnel." And of  
15 course I put some emphasis on the word  
16 "some," because to me the word "some" means  
17 that there are other duties that are not  
18 listed in the manual. Is that a fair  
19 interpretation?

20 A. Other duties of?

21 Q. Other duties and responsibilities of  
22 certain key department personnel that are not  
23 listed.

24 A. Could be, yes.

25 Q. Does the word "some" indicate to you

1 that not all are listed?

2 A. Right, sure.

3 Q. Okay. The first sentence of the  
4 second paragraph states: "It will be used as  
5 a guideline for the Warden to assure that  
6 operational functions are properly planned  
7 with staff who have designated  
8 responsibilities in performing a judicially  
9 ordered execution by lethal injection."

10 And, again, sir, I want to direct your  
11 attention to the word I put emphasis on,  
12 which is "guideline." To me, "guideline"  
13 means it's a guide, but the Warden is free to  
14 use his own discretion in carrying out the  
15 execution. He's guided by it, but ultimately  
16 he's in charge with how the execution will  
17 move forward?

18 A. Well, the Warden has certain  
19 responsibilities in regard to the protocol,  
20 as does the Commissioner of the Department,  
21 who is ultimately responsible for the overall  
22 administration of -- of the -- of executing  
23 offenders.

24 Q. So what does "guideline" mean?

25 A. I think it's a -- it -- as much as

1 you've said, a guide that gives instructions  
2 and clarification in some areas and that --  
3 that can be used as a guide.

4 Q. Okay. Other than the Lethal Injection  
5 Manual, is the Warden provided with any  
6 additional training to understand how he  
7 should exercise his role in a lethal  
8 injection should an event arise that's not  
9 covered in the manual?

10 A. The execution protocols is the primary  
11 instruction or guide. Other than that and my  
12 involvement in -- in consultation with the  
13 Warden.

14 Q. Okay. And what would be the basis of  
15 your training to assist the Warden in  
16 understanding how to discharge his duties  
17 under the Lethal Injection Manual?

18 A. Specifically as related to what  
19 procedure?

20 Q. As related to his responsibilities in  
21 carrying out a lethal injection.

22 A. It would be -- what my understanding  
23 of the protocol itself, my understanding of  
24 the processes and procedures that each  
25 individual is responsible for in -- in the

1 protocol itself, and then basically my role  
2 as Commissioner of the Department who is  
3 ultimately responsible for the administration  
4 of the protocol.

5 Q. So other than this document, though,  
6 what I'm trying to get at, though, is there  
7 any other source of information that you draw  
8 upon in order to provide wisdom and guidance  
9 to the Warden in his duties of carrying out a  
10 lethal injection under the protocol?

11 A. Well, as Commissioner, there's -- I  
12 think my communications or my, I guess,  
13 discussions that I've had with other  
14 officials, other professionals both in  
15 Tennessee and other areas, other States  
16 regarding executions and the responsibility  
17 as the Commissioner helps in that process.  
18 Helps me make decisions and provides  
19 information that I would use in making  
20 decisions.

21 Q. So am I hearing you say that as a  
22 corrections professional, you have networked  
23 and spoken with other corrections  
24 professionals who faced lethal injection  
25 executions, and obtained knowledge from them

1 about how to conduct an execution?

2 A. I have -- not about how to conduct an  
3 execution.

4 Q. Okay.

5 A. About their experiences, things  
6 regarding executions. So, yes, I have spoken  
7 with other officials in other states.

8 Q. Has that been at conferences?

9 A. It's been at conferences. It's been  
10 personal discussions, one-on-one discussions.  
11 It's been in several ways, not just at  
12 conferences.

13 Q. Okay. So in addition to conferences,  
14 one-on-one discussions on the phone?

15 A. Possibly.

16 Q. And by e-mail?

17 A. No.

18 Q. By site visits?

19 A. No. Not site -- not -- not site  
20 visits for the particular -- to attend an  
21 execution. No, that's not the case.

22 Q. So you've not traveled to other states  
23 to attend executions?

24 A. I have not.

25 Q. Has any -- without telling me names or

1 where, but has anyone in the Department who's  
2 currently serving in the Department attended  
3 executions in other states?

4 A. I believe they have.

5 Q. And do you know whether those  
6 executions that these Department employees  
7 have attended involved the use of the drug  
8 midazolam?

9 A. I'm not sure about that.

10 Q. Do you have any knowledge as to what  
11 sort of drug was used?

12 A. Not specifically, not at this point, I  
13 do not.

14 Q. Do you have a way of determining what  
15 kind of an execution they attended?

16 A. Not without asking them.

17 Q. Okay. Was it -- is it more than one  
18 employee?

19 A. I'm not sure about that.

20 Q. Do you know whether Department of  
21 Corrections staff -- and I'm sorry for my  
22 wording; I'm trying to not to identify  
23 anybody --

24 A. That's okay.

25 Q. -- by gender.

1                   Do you know whether or not the  
2         Department of Corrections staff member or  
3         members who have attended an execution  
4         attended an execution that used a three-drug  
5         protocol?

6     A.        I'm not sure.

7     Q.        And so then I would assume you don't  
8         know if it involved a one-drug protocol?

9     A.        Exactly.

10    Q.       Or a two-drug protocol?

11    A.       Right.

12    Q.       What was the purpose of sending the  
13      Department of Correction member or members to  
14      view an execution in another state?

15    A.       So let me say that -- well, I'll  
16      answer it. I don't -- I don't know.

17    Q.       Okay.

18    A.       At the time, I was not the  
19      Commissioner, so I'm not sure about that.

20    Q.       Okay. So this is an event that  
21      occurred prior to you assuming your role as  
22      Commissioner of Correction?

23    A.       That's correct.

24    Q.       So earlier I asked you about whether  
25      or not you gained information from another

1 Department by site visit, and you clarified  
2 for me that certainly not a site visit to  
3 attend an execution, but that begs a certain  
4 question. So have you traveled and had  
5 in-person meetings at other Department of  
6 Corrections regarding their lethal injection  
7 protocols?

8 A. Well, not for the specific purpose of  
9 inquiring about lethal injection protocols.

10 I visit a lot of states. I talk to a  
11 lot of people. And I would just say that the  
12 -- most of the -- most of the commissioners  
13 and directors of corrections in America, this  
14 is a discussion that comes up quite often  
15 because of the difficulty in obtaining lethal  
16 injection chemicals and them not being  
17 available. It's a discussion that comes up  
18 quite often. So it's -- it's a -- it's one  
19 of those common subjects that --

20 Q. Okay.

21 A. -- comes up.

22 Q. So at this point, I just want to put  
23 -- I want to ask Mr. Sutherland the question  
24 before I ask you the question.

25 A. Okay.

1 Q. Because I think I anticipate that he  
2 would object.

3 A. Okay.

4 MS. HENRY: Foso, Mr. Sutherland,  
5 at this point I would want to ask  
6 Commissioner Parker which Departments of  
7 Correction he has consulted with.

8 MR. SUTHERLAND: Yes.

9 MS. HENRY: And I would assume you  
10 would object?

11 MR. SUTHERLAND: I will instruct  
12 him not to answer based on the Court's  
13 April 24th order.

14 MS. DAVIS: May.

15 MR. SUTHERLAND: I'm sorry. I was  
16 in the wrong date. May 24th, 2018,  
17 10:39 a.m., based on the second paragraph on  
18 Page 20 that says: "While the Deponents may  
19 generally describe their efforts to obtain  
20 Protocol A, including whether Protocol A was  
21 obtained, and if not, the reasons why it  
22 could not be obtained, the scope of this  
23 discovery shall not extend to the identity of  
24 any suppliers, pharmacies, manufacturers,  
25 retailers, wholesalers, distributors, or

1 other sources or suppliers, or any agency,  
2 institution, or party, including Departments  
3 of Corrections of other states, from which it  
4 has or has attempted to obtain  
5 pentaobarbital."

6 So I would instruct him not to  
7 answer based on that.

8 MS. HENRY: And so given  
9 Mr. Sutherland's objection, I will state for  
10 the record that we disagree with  
11 Mr. Sutherland's interpretation of the  
12 Court's order.

13 BY MS. HENRY:

14 Q. And that we believe that we are  
15 entitled to inquire as to States that you  
16 have had general discussions with about the  
17 ability to obtain pentaobarbital and other  
18 execution drugs for execution and that we  
19 would want to ask you the specific names of  
20 places that you have consulted. And we  
21 believe we're entitled to do so under the  
22 Court's order.

23 Mr. Sutherland has instructed you not  
24 to answer the question.

25 MS. HENRY: And I'm going to ask

1 the court reporter to please certify the  
2 question.

3 BY MS. HENRY:

4 Q. We'll go to court on June 12th and  
5 make our case in front of the judge.

6 A. Okay.

7 Q. And if she orders that you are to  
8 respond, we'll all gather back together  
9 again, okay?

10 A. Okay.

11 Q. Although for a much briefer time at  
12 that point, I'm sure.

13 So without naming any of the  
14 institution -- other departments that you  
15 have had conversation with, is it a fair  
16 statement that you have discussed with other  
17 Department of Correction officials  
18 difficulties in obtaining lethal injection  
19 drugs?

20 A. It's fair to say that I have  
21 communicated with other officials in other  
22 states who would have knowledge of the  
23 difficulties in obtaining lethal injection  
24 chemicals, yes.

25 Q. And would those chemicals include

1 pentaobarbital?

2 A. Yes.

3 Q. And would they -- that include the  
4 active pharmaceutical ingredient or API  
5 necessary to compound pentaobarbital?

6 A. Yes.

7 Q. Would that also include difficulties  
8 in obtaining midazolam?

9 A. Yes.

10 Q. And would that also include  
11 difficulties in obtaining vecuronium bromide?

12 A. Yes.

13 Q. Would that include difficulties in  
14 obtaining potassium chloride?

15 A. Yes.

16 Q. Would that include difficulties in  
17 obtaining saline?

18 A. That is not a discussion that we  
19 have -- and that I have -- that I can recall  
20 having with other officials, the difficulty  
21 in obtaining saline.

22 Q. All right. Are you aware that there's  
23 a national shortage on saline?

24 A. There is -- there's been -- I've heard  
25 people in the Department talk about that, but

1 my wife is a -- is a nurse practitioner, so  
2 I've heard her say that.

3 Q. Okay.

4 A. So -- but that's basically my  
5 knowledge.

6 Q. When people in the -- I'm sorry. I  
7 didn't mean to cut you off.

8 A. No, that's okay.

9 Q. When people in the Department have  
10 discussed the shortage of saline, what has  
11 that been in reference to?

12 A. Our issues at DeBerry Special Needs  
13 facility would -- caring for the inmates that  
14 are sick there and would have issues from  
15 time to time finding saline. That's  
16 basically it.

17 Q. You mentioned DeBerry Special Needs  
18 facility. So this would probably be a good  
19 point to have you state what DeBerry Special  
20 Needs facility is.

21 A. It is the facility in Nashville that  
22 houses the main medical facility for the  
23 Department, cares for the sickest offenders  
24 we have, basically.

25 Q. The sickest offenders, is that what

1 you said?

2 A. Yes, I'm sorry.

3 Q. So is that a prison -- the prison  
4 hospital?

5 A. It is.

6 Q. All right. Does the -- does DeBerry  
7 Special Needs have an on-site pharmacy?

8 A. We have a pharmacy -- central pharmacy  
9 at DeBerry, yes.

10 Q. And does that central pharmacy have a  
11 DEA license?

12 A. They do.

13 Q. Are they able to obtain controlled  
14 substances, purchase controlled substances?

15 A. They do.

16 Q. And if the Department were to obtain  
17 lethal injection chemicals, would they have  
18 to be delivered to the pharmacy at DeBerry  
19 Special Needs before being transferred to  
20 Riverbend?

21 A. I don't know that they would have to.  
22 I'm not sure.

23 Q. Are they --

24 MR. SUTHERLAND: I'm going to  
25 object, relevance.

1 BY MS. HENRY:

2 Q. You can go ahead and answer.

3 A. The -- it's my understanding that --  
4 that has occurred. And I believe that's the  
5 process, yes.

6 Q. Commissioner, it is now a quarter till  
7 11:00 by my watch. And for me, this would be  
8 a good point to take a break. Is that okay  
9 with you?

10 A. That's fine.

11 Q. All right.

12 MS. HENRY: We'll take a break and  
13 go off the record.

14 (Brief recess observed.)

15 MS. HENRY: All right. It is  
16 11:01 by my watch, and we're back on the  
17 record.

18 BY MS. HENRY:

19 Q. So, Commissioner, thank you for  
20 allowing me to take a little break.

21 A. Sure.

22 Q. And, of course, what normally happens  
23 when you take a little break and there are a  
24 lot of lawyers in the room, they have some  
25 ideas of some questions that I missed. So

1 I'm going to try and get some real quick, and  
2 then we'll move along, okay?

3 A. Okay.

4 Q. So when we broke, we were discussing  
5 Page 1 of the Lethal Injection Manual, and I  
6 was asking you about the use of the word  
7 "guideline" and that the manual is a  
8 guideline for the Warden.

9 Is the Warden free to deviate from the  
10 guideline?

11 A. Well, how would you -- give me an  
12 example. How -- what do you mean, deviate?

13 Q. Is the Warden free to -- I don't know  
14 how he might deviate. That's a good  
15 question.

16 Is he free to order -- I'll just give  
17 you an example and get right to it. If he  
18 were to administer -- signal to the  
19 Executioner to administer the midazolam and  
20 conduct a consciousness check, as is defined  
21 in the manual, and determine that the inmate  
22 responded in some way that was ambiguous as  
23 to whether or not he was sedated or not  
24 sedated, would the Warden be free to signal  
25 the Executioner to move forward with the

1 execution?

2 A. No, that would not be following the  
3 protocol.

4 Q. Would the Warden be free to not order  
5 execution drugs as he is directed to do by  
6 the execution people?

7 A. No. The ordering of -- let me just --  
8 the ordering of the drugs, again, by the  
9 Warden or his designee, it's obvious the  
10 Department has to order the chemicals. So if  
11 you're asking me if the Warden decided that  
12 the expiration dates were checked and our  
13 chemical, say, for instance was no good or  
14 not -- not current, for him just to  
15 arbitrarily say, "I'm not going to order the  
16 drugs," no, that would not be -- that would  
17 not be acceptable either.

18 Q. Does the Warden have to receive  
19 instruction from someone in order to order  
20 the drugs?

21 A. The Warden and his designee is  
22 responsible for that, and the Warden would  
23 work in conjunction with the staff to ensure  
24 that the drugs were ordered.

25 Q. Would you -- let me give you this

1 scenario, Commissioner. Let's say, for  
2 example, the Warden signals the Executioner  
3 to inject the first protocol involving  
4 midazolam and conduct the consciousness check  
5 as that is defined in the manual, and he  
6 determines that the inmate is responsive.

7 You follow me so far?

8 A. I do.

9 Q. And then he orders a second -- the  
10 Executioner to move to the second set and to  
11 give a second dose of midazolam.

12 A. Uh-huh.

13 Q. You following me?

14 A. Uh-huh.

15 Q. Is that a "yes"?

16 A. Yes, I'm sorry.

17 Q. And then the protocol does not require  
18 the Warden to conduct a consciousness check  
19 at that point; is that correct?

20 A. It's my understanding the  
21 consciousness check would be conducted after  
22 the first chemicals are injected, which would  
23 be the 500 milligrams of midazolam,  
24 regardless if it's at first or second -- the  
25 red set or blue set, there's a consciousness

1 check made at that point to determine that  
2 the offender is unconscious.

3 Q. Would you agree with me that the  
4 second consciousness check is not in the  
5 Lethal Injection Manual?

6 A. I'm not -- I'd have to go back and  
7 take a look at it.

8 Q. Sure. Let's just take a quick minute  
9 to do that. I'm going to direct your  
10 attention to Page 70 of the manual. And at  
11 the top of the page, it reads "7:10 p.m.,"  
12 and this is Day 3 of the evening schedule for  
13 Protocol B. And Paragraph 6 instructs the  
14 Warden to conduct a consciousness check after  
15 the first 500 milligrams of midazolam is  
16 administered.

17 Do you see that?

18 A. Uh-huh.

19 Q. "Yes"?

20 A. Yes. I'm sorry.

21 Q. And the last sentence states: "If the  
22 condemned inmate is responsive, the Warden  
23 shall direct the Executioner to switch to the  
24 secondary IV line. See Contingency Issues on  
25 Page 73."

1                   Is that correct?

2   A.           That's correct.

3   Q.           So if we turn to Page 73 -- and that's

4                   the Contingency Issues page; is that correct?

5   A.           Correct.

6   Q.           And that page applies for both

7                   Protocol A and Protocol B?

8   A.           Yes.

9   Q.           And I don't think we've said it so far

10                  today, but Protocol A is the pentaobarbital

11                  protocol; is that correct?

12   A.           Yes.

13   Q.           And Protocol B is the three-drug

14                  protocol involving midazolam; is that

15                  correct?

16   A.           That's correct.

17   Q.           Both protocols are still active in the

18                  Department of Correction; is that correct?

19   A.           Yes.

20   Q.           Either one could be used?

21   A.           Correct.

22   Q.           If the Department obtains drugs prior

23                  to any execution of the 33 Plaintiffs,

24                  Protocol A is available; is that correct?

25   A.           If we were to be able to obtain the

1      drugs for Protocol A, it would be available,  
2      yes.

3      Q.        Okay. And if you were able to obtain  
4      the drugs for Protocol B, it would be  
5      available; is that correct?

6      A.        Yes.

7      Q.        So Tennessee has a choice built into  
8      the lethal injection protocol; is that  
9      correct?

10     A.        We have a choice based on the  
11      availability of the -- of the chemicals.

12     Q.        Now, I want to get back to that  
13      question in a minute, the choice based on  
14      availability. But I want to stick with where  
15      we were right now, about what the Warden is  
16      to do in a contingency.

17            The first deals with IV line  
18      alternatives, and we're not dealing with that  
19      situation if we have to go to the second set,  
20      correct? So we'll agree that's not  
21      applicable?

22     A.        Okay.

23     Q.        The second: Interruption of the  
24      delivery of the lethal injection drugs in the  
25      primary IV line." It states: "The

1 Executioner switches to the secondary IV line  
2 and starting with Syringe No. 1 (blue) begins  
3 the administration of the second set of  
4 syringes using the reserve tray."

5 Do you see that there?

6 A. I do.

7 Q. And of the other possible contingency  
8 that could be followed is the last one listed  
9 on the page: "Repeating the Lethal Injection  
10 Process."

11 "If the inmate is not deceased after  
12 the initial set of syringes has been  
13 injected and [sic] the physician has returned  
14 to the designated waiting area."

15 When I stop after the end of that  
16 first sentence, that doesn't really seem to  
17 apply to our scenario either, as to what he's  
18 supposed to do, correct?

19 A. As to who is supposed to do?

20 Q. As to the Warden.

21 A. Warden? No.

22 Q. So when we move to the secondary line,  
23 it appears that that second contingency issue  
24 is what is to be followed if the inmate is  
25 responsive after the delivery of the first

1 dose of midazolam; is that correct?

2 A. I think the second applies, but I also  
3 think part of the third would apply where we  
4 talk about repeating the lethal injection  
5 procedure with the second set of syringes  
6 which would -- in my interpretation would  
7 include the -- the processes that apply to  
8 using the -- the second set of chemicals.

9 Q. So you read the word "repeat" there as  
10 the ex-- the Warden goes back to Paragraph 6  
11 and repeats it exactly the same?

12 A. Well, I think -- what I'm saying is  
13 that when we say "repeat the lethal injection  
14 procedure," I agree there -- there's nothing  
15 mentioned in the second paragraph regarding a  
16 consciousness check. But I think when you go  
17 to the second set of syringes and begin the  
18 process again with the first drug being  
19 midazolam, that you would follow the same  
20 procedure as laid out in the protocol.

21 Q. So --

22 A. Which would include a consciousness  
23 check.

24 Q. So you would agree with me, then,  
25 that's an ambiguity in the written protocol

1 as to what the Warden should do in that  
2 situation?

3 A. I think it could be ambiguous to  
4 someone who is not familiar with the process.  
5 I think to the people who carry this process  
6 out, that's -- that's the intent. I'll say  
7 that.

8 Q. All right. Have you specifically  
9 counseled the Warden on the necessity of  
10 conducting a second consciousness check  
11 should the need arise?

12 A. I don't -- I don't know that me and  
13 the Warden specifically have had that  
14 conversation in particular.

15 Q. And during an execution, it's my  
16 understanding that you would be up in the  
17 Warden's office, not back in the execution  
18 chamber itself; is that correct?

19 A. Correct.

20 Q. And so in the execution chamber during  
21 the execution process, once it begins, the  
22 Warden is in charge; is that correct?

23 A. That's -- well, the Warden is in  
24 charge of carrying out the process, the  
25 mechanics of the -- of the protocol.

1 Q. Are you aware, Commissioner Parker, of  
2 instances where an inmate was not rendered  
3 insensate and unresponsive after a second  
4 dose of midazolam?

5 A. In anywhere? Are you talking about  
6 across the United States?

7 Q. Yes, anywhere in the United States.

8 A. I have read reports or -- news reports  
9 and all of what was reported as inmates who  
10 were not completely unconscious at the time,  
11 yes.

12 Q. Okay. And does our protocol give the  
13 Warden any guidance as to what he should do,  
14 if after the administration of a second dose  
15 of midazolam, the inmate is still responsive?

16 A. I don't know that the -- that the  
17 protocol specifically says what you do. The  
18 procedure is he would notify the  
19 Commissioner.

20 Q. And what would happen then?

21 A. The -- if -- if after the second dose  
22 or the second round of drugs and the second  
23 check of midazolam and the offender was still  
24 conscious, then I would delay the execution,  
25 stop the execution.

1 Q. So there would be no further drugs?

2 A. No.

3 Q. No? It's two sets and that's it?

4 A. Exactly.

5 Q. All right. Does the Warden know that?

6 A. I'm assuming he does. He should know,  
7 but that's -- that's the protocol. That's my  
8 procedure.

9 Q. Okay. Is that written down anywhere?

10 A. No, not that I'm aware of.

11 MR. KISSINGER: Excuse me, I'm  
12 sorry.

13 MS. HENRY: Let the record reflect  
14 that Mr. Kissinger is having a coughing fit.

15 BY MS. HENRY:

16 Q. Turning back to Page 1 of the Lethal  
17 Injection Manual, it indicates that  
18 Section 8, "Perimeter security is  
19 confidential and not subject for public  
20 release."

21 So other than Section 8, was the  
22 entire Lethal Injection Manual provided to  
23 Plaintiffs' counsel?

24 A. With the -- it's my understanding it  
25 was with the exception of this Section 8.

1 Q. Okay. And can I ask you to turn now,  
2 sir, to Page 6 of the protocol, the  
3 January 8th, 2018 protocol?

4 A. Okay.

5 Q. Does that page bear your signature,  
6 sir?

7 A. It does.

8 Q. And what does your signature on that  
9 page signify?

10 A. It signifies that the protocol is the  
11 official protocol of the Department of  
12 Corrections and my signature as Commissioner  
13 verifies that.

14 Q. So does your signature indicate that  
15 you have adopted the protocol as the  
16 Commissioner of the Department of Correction?

17 A. Yes.

18 Q. And as they say, the buck stops with  
19 you?

20 A. Yes.

21 Q. And so you are responsible for the  
22 content of this protocol?

23 A. I am responsible, yes.

24 Q. Okay. If I could ask you, sir, to now  
25 turn -- let me ask you this before I back up.

1                   The protocol designates  
2 responsibilities in a lethal injection  
3 according to a person's position; is that  
4 correct?

5   A.       I don't understand your question.

6   Q.       So, for example, the Warden has  
7 certain responsibilities, the Associate  
8 Deputy Warden of Security has certain  
9 responsibilities, the Commissioner has  
10 certain responsibilities; is that correct?

11   A.       That's correct.

12   Q.       And those particular positions are  
13 designated by individuals who are known; is  
14 that correct?

15   A.       That's correct.

16   Q.       By virtue of the Warden assuming the  
17 role of Warden of the Riverbend Maximum  
18 Security Institution, the fact that he's  
19 going to oversee an execution is known?

20   A.       Correct.

21   Q.       Publicly?

22   A.       Correct.

23   Q.       And your role is known publicly?

24   A.       Correct.

25   Q.       And the Associate Deputy Warden's role

1 is known publicly?

2 A. Yes.

3 Q. There are other individuals who are  
4 described herein by titles that are unique to  
5 being a part of the lethal injection team.

6 Would you agree with me?

7 A. Yes. That's correct.

8 Q. So, for example, the Lethal Injection  
9 Recorder, Death Watch Supervisor; is that  
10 correct?

11 A. That's correct.

12 Q. The Institutional Chaplain is known;  
13 is that correct?

14 A. That position is known, yes.

15 Q. But that person doesn't take part in  
16 carrying out an execution; he's -- he or she  
17 is there really to counsel the inmate; is  
18 that --

19 A. Which is part of the process, but,  
20 yes, I agree.

21 Q. They're not going to take part in  
22 delivering the chemicals?

23 A. Exactly.

24 Q. And they won't strap him down?

25 A. Exactly.

1 Q. There is a Physician's role; is that  
2 correct?

3 A. That's correct.

4 Q. And that person is known to you, but  
5 is kept -- his name -- his or her name is  
6 kept confidential; is that correct?

7 A. That's correct.

8 Q. Does the Department currently have a  
9 contract with a physician who is willing to  
10 participate in the execution scheduled for  
11 August 9th of Billy Ray Irick?

12 A. I believe -- I would have to check  
13 with counsel on that to -- to be sure.

14 Q. And is that because it is General  
15 Counsel's role to identify that person and to  
16 secure their contract?

17 A. It's because General Counsel would  
18 handle contracts of a legal nature regarding  
19 the process and -- which would, you know, be  
20 in their purview. And so to answer your  
21 question correctly, I would need to talk to  
22 counsel.

23 Q. All right. So you don't currently  
24 know if there's a physician under contract  
25 for the upcoming execution on August the 9th?

1 A. It's -- I am -- I would say 95 percent  
2 sure that it is. I believe that's taken  
3 place, but I would -- again to be certain, I  
4 would have to talk with counsel.

5 MR. SUTHERLAND: Just note my  
6 objection for the record. The protocol calls  
7 for a physician. And so for a facial  
8 challenge, we assume for the purposes of the  
9 protocol there is a physician, so this line  
10 of questioning is irrelevant.

11 MS. HENRY: And I would state for  
12 the record that the fact that there is a  
13 physician involved is directly relevant to  
14 the question of availability.

15 BY MS. HENRY:

16 Q. But we're -- you've already answered  
17 my question, so we'll move on.

18 You have IV Team members; they're  
19 confidential. Facility Maintenance,  
20 Extraction Team Members, those are all  
21 confidential employees; is that correct?

22 A. Yes.

23 Q. But they attend the monthly  
24 rehearsals; is that correct?

25 A. Yes.

1 Q. How many monthly rehearsals have you  
2 attended since being Commissioner?

3 A. I don't know the exact number. I  
4 would just say approximately two or three,  
5 probably. Four, maybe. I don't know. The  
6 last one I remember was a couple months ago.  
7 But I -- I don't remember -- I don't keep the  
8 exact dates on those.

9 Q. Okay. So I will represent to you,  
10 Commissioner Parker, that in response to  
11 Tennessee Public Records Act Requests on my  
12 behalf, the Department has produced exactly  
13 one rehearsal of the three-drug protocol  
14 which occurred on February 20th of 2018.

15 Are you aware if there have been more  
16 than one rehearsal of the three-drug  
17 protocol?

18 A. So define "rehearsal."

19 Q. Well, why don't you tell me what  
20 rehearsal means to you?

21 A. Well, here's the reason I ask the  
22 question.

23 Q. Yeah.

24 A. The facility has the process of going  
25 over the protocol monthly, okay? They do

1 that often there. There are occasions where  
2 the Department of Corrections would complete  
3 a full-scale practice rehearsal that would  
4 involve outside law enforcement, setting up  
5 perimeter, going through all the steps in  
6 regards to the complete protocol itself, and  
7 that's on a much larger scale than what they  
8 do monthly.

9 So obviously when we prepare for an  
10 upcoming execution, as Commissioner, I would  
11 ask the Warden to conduct those more often,  
12 to be -- make people more familiar with the  
13 process, more practice, I guess you would  
14 say, and that would happen more. The  
15 full-scale rehearsal that I think you're  
16 referring to is not something that happens  
17 every month.

18 Q. Okay.

19 A. So that's the reason I asked for the  
20 clarification.

21 Q. Sure. I've heard the phrase "band  
22 practice" before. Have you heard the phrase  
23 "band practice"?

24 A. I have.

25 Q. And what is "band practice"?

1 A. It's my understanding that that's the  
2 term they use for the monthly practice they  
3 use at Riverbend.

4 Q. Okay. And I guess what I'm very  
5 interested in knowing about is how often the  
6 Department gathers together for band practice  
7 wherein an individual is actually placed in  
8 the same position as an inmate and the  
9 Executioner practices pushing the chemicals.

10 A. Okay. Is that a question?

11 Q. How often does that happen?

12 A. It's my understanding that that  
13 happens monthly whenever they have the -- go  
14 through the process, that that's part of the  
15 -- the monthly training.

16 Q. And at -- during the monthly training,  
17 is there someone there who's responsible for  
18 keeping a recording of everything that  
19 happens, just like if they were in an actual  
20 execution?

21 A. I'm assuming there -- there is, but  
22 specifically, I wouldn't be able to tell you  
23 who that is.

24 Q. And so, Commissioner Parker, what I  
25 was mentioning earlier is that those sheets

1 have been provided to us from your General  
2 Counsel for a band practice session on  
3 February 20th of 2018, and we've received no  
4 further responses to our Public Records Act  
5 Request for such documents, and so I'm  
6 wondering have those practice sessions  
7 occurred?

8 A. To my knowledge, they have occurred  
9 monthly like they're supposed to.

10 Q. To your knowledge, was the three-drug  
11 protocol practiced prior to February 20th of  
12 2018?

13 A. Oh, I'm sure it was. I'm --

14 Q. When do you believe it was first  
15 practiced?

16 A. I don't know for certain. I would  
17 have to talk with the Warden. But -- so I  
18 don't know the exact date.

19 Q. Would it have been practiced prior to  
20 January 8th, 2018?

21 A. I think it would have been -- we would  
22 have began that process once we discussed  
23 changing the protocol. But, again, I'm not  
24 sure. I'd have to go back and check on that.

25 Q. Okay. Could you do that for me?

1 A. Sure.

2 Q. And if those documents exist, would  
3 you mind providing them to us?

4 A. What documents?

5 Q. The documents documenting the  
6 practices.

7 A. Yes. Yes.

8 Q. You would provide those?

9 A. Yeah, as long as the --

10 Q. Redacted?

11 A. Counsel -- yeah, yeah. My counsel  
12 would -- I could talk to them and they would  
13 provide it.

14 Q. Okay. Thank you. We appreciate that.

15 From the records that we've seen, the  
16 Department continues to also practice  
17 Protocol A as well as Protocol B.

18 Is that your understanding?

19 A. I'm not aware of the -- the current  
20 practices that's been conducted, I have not  
21 been made aware that they're currently  
22 practicing Protocol A, which would be the  
23 pentobarbital --

24 Q. Okay.

25 A. -- the three-syringe solution or the

1 three -- two drugs -- the two syringes of the  
2 drug and the saline flush.

3 Q. And why aren't they practicing  
4 Protocol A?

5 A. Well, again, it's the same principle  
6 of -- of pushing a drug or delivering a drug  
7 through an IV, but the fact that the number  
8 of syringes that are laid out in Protocol B  
9 is different than Protocol A, and the fact  
10 that currently, although, it's ongoing, a  
11 search for pentaobarbital -- we've been  
12 unable to find it. And I have no reasonable  
13 expectation that I'll be able to find it. So  
14 that's basically the reason.

15 Q. And your search for pentobarbital is  
16 ongoing?

17 A. Absolutely.

18 Q. And so if you're able to secure  
19 pentaobarbital prior to August the 9th, 2018,  
20 it would be available?

21 A. If we were to be able to find  
22 pentaobarbital, a source, and have it  
23 available before the execution, yes, it would  
24 be available. That -- that Protocol A would  
25 be available.

1 Q. And the fact that the members of the  
2 Execution Team are practicing Protocol B, the  
3 practical difference of that in a practice  
4 session means that they are simply pushing --  
5 the Executioner is pushing more syringes?

6 A. They're -- they're -- well, yeah, it's  
7 a different -- it's a different setup as far  
8 as the number of syringes. And it's a  
9 different drug, of course. But that's  
10 primarily it, yes.

11 Q. Are you confident that by engaging in  
12 practice sessions for Protocol B, the  
13 Execution Team would be in a position to be  
14 able to carry out Protocol A without having  
15 to have a whole new practice session?

16 A. Well, let me just say that, yes, I am  
17 -- I'm confident in that.

18 Q. Okay.

19 A. Yes.

20 Q. During the practice sessions that  
21 you've attended as Commissioner, and even  
22 those that you've attended as the Assistant  
23 Commissioner of --

24 A. Prisons.

25 Q. -- Prisons, has there been, without

1 identifying him or her, a physician present  
2 to provide guidance during the execution  
3 process?

4 A. During the practices?

5 Q. The practice session, yes.

6 A. There has.

7 Q. On more than one occasion?

8 A. There has.

9 Q. And what has the purpose -- what role  
10 has the physician served in that practice  
11 session?

12 A. The role of the physician is to assist  
13 with the process; of course, to check the  
14 offender for death or signs of death, and to  
15 declare the offender deceased. And also to  
16 provide guidance or assistance in finding an  
17 alternative site for IV if -- if one cannot  
18 be found. And possibly even doing a  
19 procedure, a cutdown procedure to find an  
20 access point.

21 Q. During the practice --

22 A. But.

23 Q. I'm sorry, go ahead.

24 A. They would also -- and, again, the  
25 physician is there also to assist in the

1 process.

2 Q. Does the physician provide training or  
3 guidance to the Warden as to how to determine  
4 whether an inmate is sensate to pain?

5 A. The protocol does not call for that.  
6 I think that's an option that, should the  
7 Warden need assistance, the physician  
8 possibly could do that, but it's not in the  
9 protocol.

10 Q. How would the Warden know to exercise  
11 that option?

12 A. Well, the -- the Warden would have to  
13 make a determination based on his check of  
14 the offender to see if he is conscious or  
15 not. That would be a decision the Warden  
16 would have to make.

17 Q. During the practice sessions, has the  
18 physician provided training or guidance as to  
19 whether or not the consciousness check, as  
20 defined in the protocol, is sufficient to  
21 determine whether the inmate is sensate?

22 A. I don't know that that question has  
23 been asked of the physician, and I -- not to  
24 my knowledge.

25 Q. Does the physician provide training or

1 guidance to the Warden or any member of the  
2 Execution Team as to how to recognize signs  
3 that the inmate, though initially sedated,  
4 has regained the ability to feel pain?

5 A. No.

6 Q. Has the Department sought that  
7 training?

8 A. Sought the training from anyone about  
9 the --

10 Q. Correct.

11 A. No.

12 Q. Where did the Department obtain the  
13 consciousness check? On what basis did the  
14 Department decide that the consciousness  
15 check as it exists in the protocol is  
16 sufficient to determine that the inmate is  
17 insensate to pain?

18 A. That was a determination made by the  
19 Department of staff, senior members of the  
20 staff, in conjunction or in consultation with  
21 other people, other individuals. Both  
22 professional and administrative -- or senior  
23 executive staff from other areas.

24 Q. Individuals outside the state?  
25 Outside of State employees?

1   A.       Yes, in some cases.

2   Q.       Okay. I'll get back to that later,  
3   but, again, since we are on a timer, I'm  
4   going to move on.

5           And I want to talk about the  
6   different --

7           MR. SUTHERLAND: Kelley, if I  
8   could interrupt you for just a second. In  
9   the event you do decide you want to go back  
10   there on Page 21, in the last paragraph, it  
11   says that: No questioning is allowed as to  
12   "information gathered and considered  
13   regarding safeguards against harm caused by  
14   any alternative methods and Protocol B."

15          MS. HENRY: And if you look  
16   earlier in the order, the Court specifically  
17   provides that -- I believe at the bottom of  
18   Page 20; I don't have it right in front of  
19   me -- that we're permitted to discuss  
20   contingency plans and the implementation of  
21   Protocol B, but we won't get back there until  
22   after lunch, so....

23   BY MS. HENRY:

24   Q.       Let's move to Page 25 of the Lethal  
25   Injection Manual, if we can. This --

1 Page 25, at the top it says "Commissioner."

2 Is that you?

3 A. That's me, yes.

4 Q. And does that page define your primary  
5 role in the execution?

6 A. It does.

7 Q. And can you tell us what your primary  
8 role is?

9 A. "To oversee the administration of  
10 judicial executions in Tennessee."

11 Q. And is "oversee" then defined by the  
12 duties as set forth below?

13 A. I think that covers some of it. It's  
14 -- it's -- as you know, it's very broad as  
15 far as overseeing the -- the process and the  
16 requirements by statute and law.

17 Q. So the first duty is pretty  
18 straightforward: "...ten minutes prior to  
19 the time scheduled for the execution, the  
20 Commissioner will establish telephone contact  
21 with the Governor's Legal Counsel."

22 That's pretty straightforward; is that  
23 right? Fair to say?

24 A. That's correct.

25 Q. And is that a direct line from the

1 Warden's office into the Governor's --  
2 wherever the Governor may be?  
3 A. Well, that's a direct communication  
4 that I would have with the Governor's legal  
5 counsel.

6 Q. Is that a landline or a cell phone?  
7 A. It could be both. There's options  
8 available for both.

9 Q. Okay.

10 A. Yeah.

11 Q. Do you know if there's a landline  
12 available to the Warden in the execution  
13 chamber?

14 A. Yes, there's a -- there's a line  
15 available that he would contact me in his  
16 office.

17 Q. Does that line provide the Warden  
18 access outside the institution or only up to  
19 the Commissioner's office?

20 A. I'm not sure. I would have to check  
21 that. I'm not sure.

22 Q. The second duty there states that your  
23 -- that your duty is: "To communicate to the  
24 Warden any circumstances that could alter or  
25 delay the execution."

1                   Can you tell me what that means?  
2   A.        Well, in my communications with the  
3   Governor's legal counsel and with others, if  
4   there was any reason to delay or halt the  
5   execution, I would communicate that to the --  
6   to the Warden.

7   Q.        So, for example, a stay of execution?

8   A.        Yes.

9   Q.        Either from the Court or the Governor?

10   A.        Yes.

11   Q.        And then the third duty has to do with  
12   taking care of the employees who participate  
13   in an execution, providing them with Employee  
14   Assistance.

15                  And we can agree that's not the  
16   subject of your deposition --

17   A.        Right.

18   Q.        -- is that fair to say?

19   A.        Yes.

20   Q.        Other than these duties -- I know you  
21   said it's pretty general -- what else is  
22   encompassed in your responsibilities to  
23   oversee the administration of a judicial  
24   execution?

25   A.        Well, again, as far as the oversight

1 of the employees that participate in the  
2 execution process, keeping the Governor's  
3 Office informed to the best of my ability,  
4 ensuring that policies and protocols are  
5 followed, general oversight of the entire  
6 process. Ensuring that practice sessions are  
7 -- are conducted and that the Department is  
8 prepared to carry out the execution as  
9 ordered by the Court. Working with staff  
10 members and other people to do everything  
11 possible to obtain the chemicals that have  
12 become so difficult to find.

13 So there's a lot of -- there's a lot  
14 of different areas that fall -- as far as  
15 oversight.

16 Q. And that's enough that could keep you  
17 busy 40 hours a week every week for a year,  
18 it sounds like. So do you delegate a lot of  
19 that responsibility to individuals you trust?

20 A. In my job, there's some -- yeah, it's  
21 delegated in a lot of cases. In some cases,  
22 you know, it's -- sometimes I have a tendency  
23 to delegate, and then I get back involved. I  
24 have trouble keeping my hand out of that.

25 Q. I'm familiar with that problem.

1 A. Yeah. But it's -- it's safe to say  
2 that it is delegated.

3 Q. And fair to say in any team, the  
4 people you delegate to are individuals who  
5 you trust?

6 A. Yes.

7 Q. And so you take their word when they  
8 report to you?

9 A. Well, let me -- yeah. It's kind of  
10 like Ronald Reagan once said, "Trust but  
11 verify."

12 Q. Yeah.

13 A. But you -- you have to trust, yes, to  
14 a certain extent.

15 Q. Otherwise nothing would ever get done?

16 A. Correct.

17 Q. Now, if we could turn now, sir, to  
18 Page 13 of the protocol. And those are the  
19 duties of the Warden; is that correct?

20 A. I'm having trouble seeing this. My  
21 contacts are....

22 Yes, it is.

23 Q. All right. And the Warden has 15  
24 specified duties during an execution; is  
25 that --

1 A. That's correct.

2 Q. Okay. And then on Page 70 -- or I'm  
3 sorry, 14, we have the Associate Warden of  
4 Security; is that correct?

5 A. That's correct.

6 Q. And he has seven designated duties; is  
7 that correct?

8 A. That's correct.

9 Q. And he would, if called upon, fill the  
10 role of Warden should the Warden be unable to  
11 carry out his duties; is that correct?

12 A. That would be an option.

13 Q. Who else would fill in for the Warden  
14 other than the Associate Deputy Warden of  
15 Security?

16 A. Well, again, if -- there's a lot of  
17 circumstances. Say, for instance the Warden  
18 becomes ill --

19 Q. Right.

20 A. -- or the Assistant Warden, some issue  
21 was going on, I would have the authority to  
22 appoint somebody as Acting Warden for that  
23 process. And it would more than likely be  
24 somebody in the senior management role that I  
25 would place in that position, should that be

1       necessary.

2       Q.       So if the Warden took ill and the  
3       Associate Deputy Warden was unwilling or  
4       unable to fulfill the role of Warden, you  
5       could appoint somebody to fulfill that role?

6       A.       I could.

7       Q.       And would that be someone who had  
8       attended the practice sessions?

9       A.       I would not want to appoint somebody  
10      or -- in an acting position, certainly, to  
11      carry out an execution that has not  
12      participated -- or familiar with -- with the  
13      protocol.

14      Q.       And that process that you've just  
15      discussed, the ability to appoint an Acting  
16      Warden, that's not addressed anywhere within  
17      the Lethal Injection Manual, is it?

18      A.       No, it's not.

19      Q.       When we look at the Warden's role in  
20      carrying out a lethal injection under  
21      Protocol A, if you could turn with me, sir,  
22      to Page 20 of the protocol. I'm sorry, Page  
23      36 -- 35. Where is my eyes -- 35 of the  
24      protocol.

25      A.       Okay.

1 Q. Where it says "Protocol A:  
2 Procurement, Storage, Accountability, and  
3 Transfer of the Chemical.

4 Do you see that there?

5 A. Yes, uh-huh.

6 Q. Under the first paragraph,  
7 Procurement, it states: "Upon receipt of an  
8 order setting an execution date, the Warden  
9 or his designee shall contact a physician to  
10 obtain the physician's order for the LIC."

11 Do you see that sentence there?

12 A. I do.

13 Q. And "LIC" means lethal injection  
14 chemical, correct?

15 A. Yes.

16 Q. And under Protocol A, that would be  
17 pentobarbital; is that correct?

18 A. Correct.

19 Q. And that could be compounded  
20 pentobarbital or manufactured pentobarbital,  
21 correct?

22 A. Correct.

23 Q. Is the physician who is referred to in  
24 that sentence the same physician who would  
25 attend an execution, or is that a different

1 individual, without giving me a name?

2 A. It could be. I don't know that that  
3 limits us to one particular physician, but it  
4 could be.

5 Q. Okay. It could be, but it doesn't  
6 have to be?

7 A. Correct.

8 Q. Okay.

9 MS. HENRY: Just one second.

10 BY MS. HENRY:

11 Q. I'm going to hand you now, sir, a  
12 packet of orders that I'm going to ask the  
13 court reporter to mark as Deposition  
14 Exhibit K.

15 (Exhibit K was marked.)

16 MS. HENRY: And, I'm sorry,  
17 Mr. Sutherland, I don't have a copy for you,  
18 but I think you've seen these before.

19 MR. SUTHERLAND: Whatever.

20 I'm just kidding.

21 BY MS. HENRY:

22 Q. So in Deposition Exhibit K, there's a  
23 three orders of the Tennessee Supreme Court.  
24 The first page is State of Tennessee versus  
25 Billy Ray Irick, dated January 18th, 2018.

1 Do you see that there, the file stamp in the  
2 upper right-hand corner?

3 A. Yes, I do.

4 Q. And in this order, the Court set an  
5 execution date for Mr. Irick of  
6 August the 9th, 2018.

7 Do you see that at the bottom of the  
8 page, midway through the last paragraph?

9 A. Yes.

10 Q. And the second page of this exhibit is  
11 an order from the Tennessee Supreme Court and  
12 State of Tennessee versus Edmund Zagorski  
13 with a file stamp in the upper right-hand  
14 corner of March 18th, 2018.

15 Do you see that there?

16 A. I do.

17 Q. Do you see that Mr. Zagorski had an  
18 execution date set of October 11th, 2018 by  
19 the Court on that date?

20 A. Yes.

21 Q. And the third page is an order from  
22 the Tennessee Supreme Court and State of  
23 Tennessee versus David Earl Miller with the  
24 file stamp date of March 18, 2018.

25 Do you see that there?

1 A. I do.

2 Q. And do you see that the Court set an  
3 execution date for Mr. Miller of December  
4 the 6th of 2018; is that correct?

5 A. That's correct.

6 Q. Under Protocol A, upon the Tennessee  
7 Supreme Court setting of those execution  
8 dates, the Warden is to have obtained a  
9 physician's order for the LIC; is that  
10 correct?

11 A. That is correct.

12 Q. Do you know if the Warden's done that?

13 A. The Warden -- as far as Protocol A,  
14 obtaining the drug has not -- is not a  
15 possibility at this time. We've been unable  
16 to locate a source. And there has been, to  
17 my knowledge, no physician's order or  
18 prescription for the drug because we have  
19 nobody to send it to. There's no  
20 availability of the drug.

21 Q. And thank you for that explanation.

22 And we're going to get into that in some  
23 detail after lunch. But my question for you  
24 right now -- and you would agree with me,  
25 obtaining a physician's order is different

1 from actually obtaining the LIC, correct?

2 A. Correct.

3 Q. And under Protocol A, the first thing  
4 the Warden is supposed to do upon the Court  
5 setting an execution date, to trigger the  
6 protocol, is to obtain a physician's order,  
7 correct?

8 A. That's correct. As -- but now, my  
9 interpretation of that would be to have an --  
10 order a prescription for the drug. That  
11 would need to be sent to a pharmacist or  
12 somebody that could fill the order, and it's  
13 my understanding and it's a fact, that we  
14 don't have a source at this point to send an  
15 order to. So it's, to me, having the order  
16 without a source to fill the drug would be  
17 useless.

18 Q. And I understand that's your  
19 interpretation of the protocol.

20 A. Sure.

21 Q. As Mr. Sutherland continues to remind  
22 us, this is a facial challenge, and we're  
23 supposed to look at the face of the protocol.

24 A. I understand.

25 Q. Under the protocol as it's written,

1 upon the Court setting an execution date, the  
2 Warden is to obtain a physician's order for  
3 the LIC; is that correct?

4 A. That's correct.

5 Q. And I want to make sure that I  
6 understood your answer correctly. You used  
7 the phrase "prescription." Are you familiar  
8 with the fact that prescription and  
9 physician's orders are two different things?

10 A. I -- I am. I am.

11 Q. Okay. So is the Warden to get a  
12 physician's order or a prescription?

13 A. It's my -- my interpretation of this  
14 in the protocol would be a prescription for  
15 the LIC.

16 Q. Okay. And have you discussed your  
17 interpretation of this protocol with the  
18 Warden?

19 A. I have not.

20 Q. How would -- is the Warden to know, if  
21 he's not following the protocol as it's  
22 written, when to obtain the prescription for  
23 the LIC under Protocol A?

24 A. Once we have -- once we have a date  
25 set, and as we approach that date, based on

1       the availability of the drug, the Warden or  
2       his designee would work with the physician  
3       and the supplier to obtain the chemical.

4       Q.       So the Warden -- the Warden would have  
5       direct contact with the supplier?

6       A.       Not necessarily.

7       Q.       Okay.

8       A.       The Warden or designee. And that  
9       would be somebody -- an official in the  
10      Department of Corrections that would be  
11      responsible for assisting the Department in  
12      obtaining the drugs.

13      Q.       So the Warden would -- it's either the  
14      Warden who deals with the supplier or the  
15      physician, or the Warden's designee?

16      A.       It's -- it's the -- the -- well, let  
17      me -- let me clarify this to you.

18      Q.       Sure.

19      A.       This -- if -- if -- let's assume that  
20      we could obtain the chemicals by simply  
21      contacting the physician and him writing an  
22      order or a prescription for the drug, and it  
23      was readily available, that the Warden could  
24      make that -- set those things in motion to  
25      obtain the drug.

1                   The reality is, is that the chemicals  
2   are not available. And my role as  
3   Commissioner and my staff have worked to find  
4   -- try to find sources for the drug. Now, we  
5   communicate with the Warden and also with  
6   individuals who would supply the chemicals,  
7   and so it's a combination of -- of three or  
8   four different entities working together,  
9   really.

10                  This protocol would be, I guess,  
11   easier to understand if the drugs were  
12   available, readily available. But because of  
13   the situation at hand, the Warden -- or --  
14   and really the designee who assists the  
15   Department in finding these drugs, plays the  
16   primary role in obtaining the lethal  
17   injection chemicals.

18   Q.           And there's a lot there to unpack this  
19   afternoon, but I guess what I'm getting at  
20   right now is the protocol says on its face  
21   under Protocol A that upon the receipt of  
22   setting of an execution date, the Warden or  
23   his -- and I read "his" to modify Warden --  
24   so the Warden designee shall contact a  
25   physician to obtain a physician's order for

1 the LIC.

2                   And you're telling me that hasn't  
3 happened. And I'm asking you how would the  
4 Warden know under the protocol when he should  
5 obtain the LIC for the -- the physician's  
6 order for the LIC?

7 A.       He would know basically by  
8 communicating with Central Office or -- or  
9 Central Office -- I say Central Office. TDOC  
10 staff, senior staff, would assist in that  
11 process and notify the Warden of the fact  
12 that we had the chemical.

13 Q.       So somebody from downtown would call  
14 the Warden and tell him, "We have the  
15 chemicals, so move forward with Protocol A"?

16 A.       Somebody -- the Department would  
17 obtain -- it -- say, for instance, we were  
18 able to obtain pentobarbital.

19 Q.       Uh-huh.

20 A.       The Warden would be notified that we  
21 have the drugs for -- for Protocol A, and we  
22 would proceed with Protocol A, yes.

23 Q.       And I may have in the course of asking  
24 you these questions -- and I may have gotten  
25 you to use loose language there, so I don't

1 want to hold you to it.

2           When you say that "We have the  
3 chemicals," would that mean you already had  
4 them in your possession, or you had access to  
5 them?

6 A.       It would mean we have access to a  
7 source that I feel confident in that could  
8 supply the drugs for the process.

9 Q.       Okay. Commissioner Parker, I think  
10 we've established that you served a role in  
11 supervising the lethal injection protocol  
12 prior to becoming Commissioner, and certainly  
13 during the previous litigation regarding the  
14 one drug pentobarbital.

15           Were you familiar with the litigation  
16 that occurred --

17 A.       I was -- no, I'm not.

18 Q.       Okay.

19 A.       I'm not that familiar with it. In my  
20 role as Assistant Commissioner, at that time  
21 most of that, I am assuming, was at the  
22 Commissioner's level and the other senior  
23 staff of the Department.

24 Q.       Were you familiar -- are you familiar  
25 with how pentobarbital is compounded?

1 A. Specifically? No. I know there's raw  
2 ingredients that are involved, and it's  
3 compounded by a compounding pharmacy, but as  
4 far as the particulars, I am not.

5 Q. Are you familiar with the fact that  
6 compounded pentobarbital has a -- once it's  
7 compounded has a very short shelf life?

8 A. I have been told that, yes.

9 MR. SUTHERLAND: So I'm going to  
10 object because it's -- this is outside the  
11 scope of -- of what the Court -- first of  
12 all, pentobarbital has been upheld as  
13 Constitutional, the use of it; and, secondly,  
14 the only issue that you can ask him about is  
15 availability, unless you want to show me.

16 MS. HENRY: The short shelf live  
17 has absolutely everything to do with  
18 availability. And that's where I'm going.  
19 I'm not going with the Constitutionality of  
20 it. You'll see with my questions.

21 MR. SUTHERLAND: Okay.

22 BY MS. HENRY:

23 Q. So, Commissioner, it is my  
24 understanding that because of the short shelf  
25 life -- let me back up.

1           Has there been an execution date for  
2       any inmate where the Department was within 30  
3       days of carrying out an execution since the  
4       Department adopted a compounded pentobarbital  
5       protocol?

6   A.       I'm not sure.

7   Q.       Are you aware of any Warden for  
8       Riverbend Maximum Security Institution ever  
9       receiving a physician's order for compounded  
10      pentobarbital?

11   A.       Yes.

12   Q.       And when was that?

13   A.       I don't remember the exact year, but  
14      it was a few years ago. And I don't remember  
15      the year. But I do know that there was a --  
16      and when I say -- now, again, "order," I'm  
17      referring to a, what I call a prescription --

18   Q.       Right.

19   A.       -- for the drug. But I don't -- I  
20      don't remember the year or when that  
21      occurred.

22   Q.       Was that prescription filled?

23   A.       I'm not sure. Again, I -- at the  
24      time, I was an Assistant Commissioner, and I  
25      don't know that I would have had direct

1 knowledge of that.

2 Q. So, Commissioner Parker, what we've  
3 been led to believe is that the Department  
4 does not obtain compounded pentobarbital  
5 until such time as an execution is imminent,  
6 because of its short shelf life; is that  
7 fair?

8 A. That's fair.

9 Q. And let me stop there for a second.  
10 The first date, the execution date for  
11 Billy Ray Irick was set on January 15th of  
12 2018.

13 Do you see that there?

14 A. Is it in this order? I'm assuming --

15 Q. It's the file stamp date --

16 A. Oh, okay. Yeah.

17 Q. -- January 15, 2018; is that correct?

18 A. That's correct.

19 Q. On January 15th, 2018 or prior to  
20 January 15th, 2018, did you inform anyone  
21 with the Tennessee Attorney General's Office  
22 that the Department of Correction did not  
23 have access to pentobarbital?

24 A. I'm not sure. I -- I've informed just  
25 about everybody that I had communication with

1 that access to pentobarbital is almost -- I  
2 can't -- we can't obtain it, and I have no  
3 credible sources or availability of the drug.

4 Now, at one time -- at one time, there  
5 was a -- there was a potential source where  
6 the Department was told that we -- that a  
7 source had the raw ingredients and was  
8 willing to do the compounding, but that kind  
9 of fell through at the midnight hour, to say,  
10 because there was a -- it was my  
11 understanding there was a -- some type of  
12 agreement that the supplier sent to the  
13 pharmacist that would preclude them from  
14 selling the ingredients or the drug to a  
15 correctional agency.

16 Q. And, again, we're going to get into  
17 that in detail. But my question is: Prior  
18 to January 15th, 2018, do you know if you  
19 informed anyone at the Tennessee Attorney  
20 General's Office that you were unable to  
21 obtain pentobarbital?

22 A. I'm sure I did.

23 Q. Okay.

24 A. I'm sure I did. I -- I don't remember  
25 a specific conversation, but, again, it was

1 common knowledge that I could not, although  
2 we did have one potential source that fell  
3 through. But it's very possible that I did.  
4 I'm sure that if I was asked the question, I  
5 -- I -- I would have told them that.

6 Q. What do you mean by "common  
7 knowledge"?

8 A. With myself and my staff, the -- the  
9 people who are responsible for assisting me  
10 in trying to go to every effort to find the  
11 drug. We are very aware that it's very hard,  
12 that you can't find the source or the  
13 ingredients or anybody willing to provide it  
14 for the purpose of executions or a lethal  
15 injection.

16 Q. Did that include the Governor and his  
17 legal counsel?

18 A. Did what include?

19 Q. Common knowledge.

20 A. Oh, I'm not sure. You'd have to ask  
21 them. I -- I -- they -- any conversations I  
22 had with anyone regarding the -- if the  
23 question was posed to me: "Do you have  
24 pentobarbital," my response would have been:  
25 "I do not have it, and I don't have a source

1 that I believe I will have it."

2 So without having a specific  
3 remembrance of a particular conversation,  
4 that's -- would have been my response.

5 Q. And you have stated that you are a  
6 member of the cabinet?

7 A. I am.

8 Q. And you attend cabinet meetings?

9 A. I do.

10 Q. Has this topic come up at cabinet  
11 meetings?

12 A. Not that I remember, no.

13 Q. On February the 16th, sir, the  
14 Tennessee Attorney General's Office  
15 represented certain things to the Tennessee  
16 Supreme Court that appear to come from you,  
17 and so I'm going to ask you about them.

18 MS. HENRY: And I'll have, first,  
19 the court reporter mark this as Deposition  
20 Letter L.

21 (Exhibit L was marked.)

22 BY MS. HENRY:

23 Q. I want to first direct your attention  
24 to Page 2, Footnote 1, that states: "The  
25 Defendant's supply of pentobarbital expired

1 while the West proceeding was pending."

2                   What was -- did you provide that  
3 information to the State Attorney General's  
4 Office that there was expired pentobarbital?

5 A.            You mean me in my special -- official  
6 capacity as Commissioner?

7 Q.            Yes.

8 A.            I'm not aware. My staff may have, but  
9 I personally did not.

10 Q.           Earlier today, sir, we were discussing  
11 the Tennessee Public Records Act Request.  
12 And if I were to tell you that we have made  
13 ongoing requests to the Department for  
14 information about the department's supply of  
15 pentobarbital for five years, and that those  
16 logs show that the Department has never been  
17 in the possession of pentobarbital, would you  
18 have any reason to disagree with that?

19 A.           I don't know. I would have to talk to  
20 the staff to determine if -- the nature of  
21 that and the correct answer. I don't -- I  
22 don't know.

23 Q.           And since there hasn't been an  
24 execution in Tennessee since 2009, and  
25 compounded pentobarbital has a short shelf

1 life once it's compounded, it would make  
2 sense the Department has never actually been  
3 in possession; isn't that fair to say?

4 A. I would say so, yes.

5 Q. Page 1 of Exhibit L, second paragraph  
6 begins: "The State, through it's Department  
7 of Correction, is required by law to carry  
8 out death sentences by lethal injection, but  
9 its ability to do so after June 1st, 2018 is  
10 uncertain due to un- -- "ongoing difficulty  
11 in obtaining the necessary lethal injection  
12 chemicals."

13 Did you provide the State Attorney  
14 General with the information that supports  
15 the factual basis of that sentence?

16 A. I would say, again, any conversations  
17 I would have had to anyone, whether it be the  
18 Attorney General or anyone else, would have  
19 been: "We are having a difficult time  
20 obtaining the chemicals for lethal  
21 injection."

22 Q. Is that statement true today, that the  
23 Department -- the ability of the Department  
24 to carry out an execution is currently  
25 uncertain?

1 A. Currently, I wouldn't say that it's  
2 uncertain. I feel confident that we have the  
3 drugs for a three-drug protocol to carry out  
4 the executions in Tennessee. I do not have  
5 -- I can't say the same thing about  
6 Protocol A because I can't obtain the  
7 chemicals or the pentobarbital.

8 Q. What is the basis of your confidence  
9 that the Department currently has drugs that  
10 it can use to carry out a three-drug protocol  
11 after June 1st?

12 MR. SUTHERLAND: Objection,  
13 irrelevant.

14 MS. HENRY: Noted.

15 THE WITNESS: Based on the fact  
16 that the supply -- we -- we have a current  
17 supplier that has indicated and we feel  
18 confident in, that we can obtain the drug --  
19 the drugs for the protocol.

20 BY MS. HENRY:

21 Q. On February 15th of 2018, was it true  
22 that the Department's ability to carry out a  
23 lethal injection past June 1st, 2018 was  
24 uncertain?

25 A. Very possible.

1 Q. Is it possible that someone else  
2 within the Department of Corrections provided  
3 that information to the State Attorney  
4 General's office?

5 A. It's possible.

6 Q. And is it possible that that person  
7 was General Counsel Debra Inglis?

8 A. It's -- I would say it's possible,  
9 yes.

10 Q. Sorry, I have a lot of exhibits. It's  
11 right in front of me.

12 Commissioner, I'm going to show you a  
13 document that I will have the court reporter  
14 mark as Exhibit M.

15 (Exhibit M was marked.)

16 BY MS. HENRY:

17 Q. And that is an e-mail that was  
18 produced by Ms. Inglis pursuant to a Public  
19 Records Act Request dated October 18th, 2017.

20 MR. SUTHERLAND: Are you going to  
21 make me look over here, Kelley?

22 MS. HENRY: Oh, I'm sorry  
23 (tendering).

24 MR. SUTHERLAND: I have vision  
25 issues.

1 BY MS. HENRY:

2 Q. In that e-mail, there's a listing of  
3 drugs used for the three-drug protocol  
4 midazolam, vecuronium and potassium chloride.

5 Do you see that there?

6 A. Uh-huh I do.

7 Q. And do you see where it lists that the  
8 midazolam expires June 1st, 2018?

9 A. I see that, yes.

10 Q. And do you see where it says the  
11 potassium chloride expires May of 2018?

12 A. I see that, yes.

13 Q. And I'm going to show you another  
14 exhibit that I'll ask the court reporter to  
15 mark as Exhibit N.

16 MS. HENRY: I'm sorry,  
17 Mr. Sutherland. I don't have a copy for you.

18 MR. SUTHERLAND: That's okay.  
19 I've seen it.

20 (Exhibit N was marked.)

21 BY MS. HENRY:

22 Q. Exhibit N is photographs -- contains  
23 photographs of three sets of drugs, again  
24 provided from Ms. Inglis pursuant to a  
25 Tennessee Public Records Act Request. The

1 first is for midazolam, the second for  
2 potassium chloride, and the third for  
3 vecuronium bromide.

4 Do you see that?

5 A. I do.

6 Q. We don't see the expiration date on  
7 the label for the midazolam, but the  
8 potassium has an expiration date of 1 May  
9 2018.

10 Do you see that?

11 A. I do.

12 Q. Were these the drugs that were in the  
13 Department of Correction's possession at the  
14 time the Tennessee -- the Tennessee State  
15 Attorney General represented to the Tennessee  
16 Supreme Court that the Department's ability  
17 to carry out an execution after June 1st was  
18 uncertain?

19 A. More than likely, yes, I believe so.

20 Q. Does the -- has the Department since  
21 obtained a new set?

22 A. We have -- I am confident that we have  
23 obtained the drugs to carry out the  
24 three-drug protocol in Tennessee.

25 Q. Would the Department use expired

1      drugs?

2      A.       No.

3      Q.       Would the -- strike that question.

4                  So you're telling us today that the  
5      Department has obtained additional drugs in  
6      your physical possession?

7      A.       I'm saying that the Department of  
8      Corrections has a source that we feel  
9      confident in providing the drugs for the  
10     three-drug protocol going forward.

11     Q.       Okay. But they're not in your  
12     physical possession?

13     A.       Some are and some are not.

14     Q.       Which are?

15     A.       Any drug that would not have expired,  
16     the expiration date.

17     Q.       So that would be the vecuronium  
18     bromide, with an expiration date of December  
19     2018?

20     A.       Correct.

21     Q.       Do you have documentation available to  
22     support your statement that you have a  
23     supplier who's willing to -- that you are  
24     confident in who would supply the other two  
25     drugs necessary for a lethal injection

1 execution?

2 A. When you say do I have documentation,  
3 what specifically are you asking? I -- I  
4 have assurance from the individuals that work  
5 and have been designated by myself to assist  
6 in obtaining the drugs, that we have access  
7 and in some cases procured the drugs for the  
8 three-drug protocol or any -- or for  
9 midazolam.

10 Q. So you have assurances from TDOC  
11 employees?

12 A. And TDOC employees and suppliers.

13 Q. Does your knowledge of the assurance  
14 from the suppliers rest on what you were told  
15 is true by a TDOC employee?

16 MR. SUTHERLAND: I'm just going to  
17 object for the record, the availability for  
18 the drugs for Protocol B is not an issue.

19 MS. HENRY: Actually, it is, but  
20 noted.

21 BY MS. HENRY:

22 Q. Go ahead.

23 A. Yes, it does.

24 Q. Okay. So it depends on believing the  
25 person who told you this information; you

1 don't have direct personal knowledge?

2 A. Correct.

3 Q. Okay. It is now ten minutes after  
4 12:00. I think it's a good time to stop for  
5 lunch, if that's all right. And we will come  
6 back at 1:15.

7 A. Okay.

8 (Lunch recess was observed.)

9 BY MS. HENRY:

10 Q. We are back on the record. And by my  
11 clock, it is -- I have no idea. I believe  
12 it's 1:16. More like 1:17.

13 MR. SUTHERLAND: Close enough.

14 BY MS. HENRY:

15 Q. Commissioner, thank you so much for  
16 coming back this afternoon, not that you had  
17 a choice.

18 A. I was going to ask that question.

19 MR. KISSINGER: Seriously.

20 BY MS. HENRY:

21 Q. So I want to sort of give you an  
22 outline of where we're going to go this  
23 afternoon. I'm not sure we're going to get  
24 to cover it all, but it's just so you have a  
25 sense of where we're going and to make sure

1 that you know my game plan.

2                   We're going to move now to discuss the  
3 December 7th, 2017 e-mail which is the  
4 subject of Court-ordered discovery and then  
5 we're going to move back to the question of  
6 availability of drugs of the LIC for  
7 executions. And then we're going to move to  
8 a discussion about the implementation --  
9 further discussion about implementation of  
10 Protocol B as time allows and pursuant to the  
11 Court's order.

12 A.        Okay.

13 Q.        And when I start to ask you questions  
14 now as we move to the e-mail in question, I'm  
15 going to refer you to an order from the Court  
16 which I will have marked as Deposition  
17 Letter O.

18                   MS. HENRY: Letter O.

19                   (Exhibit O was marked.)

20 BY MS. HENRY:

21 Q.        Commissioner, Deposition Exhibit  
22 Letter O is a May 7th, 2018 order from  
23 Chancellor Lyle compelling certain items of  
24 discovery to be produced from the Defendants  
25 in this case. Have you seen this order?

1 A. Not that I recall. My staff may have  
2 seen it, but I don't recall -- particularly  
3 recall seeing it.

4 Q. All right. If you could, turn for me  
5 to Page 12. At the top of Page 12, the Court  
6 orders the Defendant -- I'll let you get  
7 there, sorry.

8 A. Okay.

9 Q. It orders the Defendants Parker and  
10 Mays to produce all documents related to the  
11 following, and the first item is: "The date,  
12 medium (electronic, telephone call, meeting,  
13 et cetera) and all information you were  
14 provided when you first learned of the  
15 September 7th, 2017 e-mail and the actions  
16 you took concerning this information."

17 Were you aware that the Court had  
18 entered that order on May the 7th of 2018?

19 A. Okay. The 7th -- the September 7th  
20 e-mail, let's -- is this -- do I have a copy  
21 of it?

22 Q. You don't yet. Let me get you a copy  
23 of that, and then we'll go back to my  
24 question. Actually, it's a -- was attached  
25 to the Complaint, but we're going to make it

1 a separate --

2 A. Okay.

3 Q. -- exhibit as well.

4 MS. HENRY: We'll have this as P.

5 (Exhibit P was marked.)

6 THE WITNESS: Thank you.

7 BY MS. HENRY:

8 Q. Uh-huh. And placed in front of you,  
9 Commissioner Parker, is Deposition Exhibit P,  
10 which contains a redacted e-mail dated  
11 September 7th, 2017, 12:58 p.m. and begins  
12 with: "Hello, that stuff is readily  
13 available."

14 Do you see that there?

15 A. Uh-huh.

16 Q. Okay. Let me then refer you back to  
17 Deposition Exhibit Letter O with respect to  
18 the Court's order that you provide the date,  
19 medium, and all information you were provided  
20 when you first learned of the September 7th,  
21 2017 e-mail. Were you aware of that Court  
22 order?

23 A. Not personally, no.

24 MS. HENRY: I'll ask the court  
25 reporter to mark this document Deposition

1 Letter Q.

2 (Exhibit Q was marked.)

3 BY MS. HENRY:

4 Q. Commissioner, Deposition Exhibit Q is  
5 a pleading signed by your lawyers,  
6 Mr. Sutherland, Ms. Davis and Mr. Mitchell,  
7 entitled: Defendant Parker and Mays Answer  
8 to Interrogatory 1 and Supplemental Response  
9 to Request for Production of Documents

10 Pursuant to the Court's Order Dated May 7th,  
11 2018.

12 Do you see that title there?

13 A. I do.

14 Q. And I am referring you now to Page 2.  
15 At the top it states: "Defendants" --  
16 "Defendants Parker and Mays submit the  
17 following supplemental response to  
18 Plaintiffs' First Request for Production of  
19 Documents Pursuant to the Court's Order Dated  
20 May 7th, 2018?"

21 "No. 1: All documents related to the  
22 date, medium, (electronic, telephone call,  
23 meeting, et cetera) and all information that  
24 they were provided when they first learned of  
25 the September 7th, 2017 e-mail and the

1 actions they took concerning this  
2 information."

3 Do you see that there?

4 A. I do.

5 Q. And what is the response?

6 A. The response: "Defendants Parker and  
7 Mays have no such documents."

8 Q. Were you consulted as to -- as far as  
9 providing information to back up that  
10 response?

11 A. To back up the response regarding  
12 documents --

13 Q. Right.

14 A. -- that I have in my possession?

15 Q. Right.

16 A. I could have been. I'm not sure. I  
17 could have been. Again, I have a lot of  
18 people that talk to me.

19 Q. Right.

20 A. And in regards to this, there was  
21 discussions with legal counsel regarding  
22 documents that I may or may not had, and --  
23 but I don't recall the specifics of this  
24 particular order for them.

25 Q. And as we discussed earlier today, you

1 have many agents who you've delegated  
2 authority to. Is it possible that the person  
3 or persons who provided the information to  
4 support this response could be one of your  
5 agents, specifically General Counsel  
6 Ms. Inglis?

7 A. It's possible, yes.

8 Q. I want to refer you to  
9 Deposition Exhibit P, the September 7th, 2017  
10 e-mail in question, and I want to ask some  
11 questions about that now, if I may.

12 This e-mail was provided pursuant to a  
13 Tennessee Public Records Act Request to  
14 myself and Ms. Santana, and it was provided  
15 by your General Counsel Ms. Inglis. It  
16 appears to be a copy of an e-mail exchange  
17 between someone inside the Department of  
18 Correction and someone who appears to have  
19 information about providing drugs for a  
20 lethal injection. Would you agree with that  
21 description?

22 A. I would.

23 Q. Have you seen this e-mail before?

24 A. I don't know that I've seen the actual  
25 e-mail, but I'm familiar with the content.

1      Somewhat familiar with the content.

2      Q.        How did you become familiar with the  
3            content?

4      A.        Through a discussion with my staff,  
5            members of my staff and myself.

6      Q.        When did that discussion first occur?

7      A.        I don't remember the exact date. I  
8            don't remember the exact date and time.

9      Q.        Was it prior to the adoption of the  
10          January 8th, 2018 protocol?

11     A.        I believe so.

12     Q.        Was it prior to Halloween of 2017?

13     A.        I'm not sure.

14     Q.        Can you place a season of the year?

15     A.        No. I -- I can't. Again, there's too  
16          many things. Too much time has occurred, too  
17          many things have happened, so I can't tell  
18          you a season of the year. I don't remember.

19     Q.        Okay. So sometime after September 7th  
20          but before January -- 2017 but before  
21          January 8th, 2018?

22     A.        Yes. Yes.

23     Q.        The e-mail begins: "That stuff is  
24          readily available, along with potassium  
25          chloride."

1                   Do you know what "that stuff" refers  
2                   to?

3   A.        I do not. I can make an assumption,  
4   but it would only be an assumption.

5   Q.        You don't have personal knowledge?

6   A.        No.

7   Q.        The next sentence states: "I reviewed  
8   several protocols from states that currently  
9   use that method. Most have a three-drug  
10   protocol including a paralytic and potassium  
11   chloride. Here is my concern with midazolam.  
12   Being a benzodiazapine, it does not elicit  
13   strong analgesic effects."

14                  What does that sentence, "being a  
15   diazepam [sic], it does not elicit strong  
16   analgesic effects" mean to you?

17   A.        It means that being a benzodiazapine,  
18   it does not elicit strong analgesic effects.  
19   I'm assuming that is -- to me, it would mean  
20   strong effects regarding a person's  
21   consciousness or pain tolerance or something  
22   like that.

23   Q.        Ability to feel pain?

24   A.        Yes.

25   Q.        Okay. This next sentence reads: "The

1 subjects may be able to feel pain from the  
2 administration of the second and third drugs.  
3 Potassium chloride, especially."

4           What do those sentences mean to you?

5 A.       The sentence would -- basically  
6 describing that someone would be able to feel  
7 pain with the injection of those two drugs.

8 Q.       The next sentence reads: "It may not  
9 be a huge concern but can open the door to  
10 some scrutiny on your end."

11           What do you take that sentence to  
12 mean?

13 A.       That it could open up questioning  
14 regarding the use of the drug.

15 Q.       The next sentence reads: "Consider  
16 the use of an alternative like ketamine or  
17 use in conjunction with an opioid.

18 Availability of the paralytic agent is  
19 spotty. Pancuronium, rocuronium and  
20 vecuronium are currently unavailable."

21           And then the next word, I cannot  
22 pronounce, but S-u-c-c-i-n-y-l-c-h-o-l-i-n-e.  
23 Mr. Kissinger is whispering it to me, but I  
24 still can't pronounce it -- "is available in  
25 limited quantity. I'm currently checking

1 other sources. I'll let you know shortly."

2 So the person who wrote this e-mail at  
3 least on September 7th of 2017 said that the  
4 paralytic was currently unavailable but it  
5 then became available; is that correct? It  
6 was unavailable on September 7th, but you've  
7 since obtained some?

8 A. Which sentence are you referring to?

9 Q. "Availability of the paralytic agent  
10 is spotty. Pancuronium, rocuronium, and  
11 vecuronium are currently unavailable"?

12 A. Correct. That's what it says.

13 Q. So the information the Department  
14 received was that one of the lethal injection  
15 chemicals necessary was unavailable on  
16 September 7th, but it became available  
17 because it came into your possession; is that  
18 correct?

19 A. It appears that's the intent of the --  
20 what the writer was saying, yes.

21 Q. When you -- I'm sorry.

22 A. No, that's -- go ahead. I'm sorry.

23 Q. You stated that you became aware of  
24 the contents of this e-mail by having a  
25 discussion between yourself and members of

1 your staff. Without providing me the names  
2 of the members of your staff, does that mean  
3 that you had conversations with people within  
4 the Department of Corrections who were  
5 advising you as to which drugs to use in a  
6 lethal injection?

7 A. They were providing me information  
8 regarding what this e-mail said.

9 Q. Okay. And what did they say to you?

10 MR. SUTHERLAND: Kelley, I'm going  
11 to -- we're going to stop there. Page 18 of  
12 the Court's May 24th Order says that "his  
13 knowledge as to the efficacy of Protocol B is  
14 not relevant to the Plaintiffs' facial  
15 challenge." The last sentence, first --

16 MS. HENRY: I'm not asking him  
17 about the efficacy. I'm asking him about  
18 what the Court ordered.

19 MR. SUTHERLAND: What knowledge is  
20 it that you're trying to get from him here?

21 MS. HENRY: His knowledge of the  
22 e-mail and the actions that he took which is  
23 specifically covered by Page 20. That's  
24 exactly why we're here to have this  
25 deposition. He was first ordered to provide

1       that information in an interrogatory. It was  
2       not done, and then she provides that we are  
3       to take his deposition and we are to discuss  
4       with him the information the Defendants were  
5       provided when they first learned of the  
6       September 7th, 2017 e-mail and the actions  
7       they took concerning that information.

8                   I'm asking him what he was told.

9       BY MS. HENRY:

10      Q.       Commissioner, what were you told about  
11       this e-mail in that discussion?

12      A.       Basically what it says here. That the  
13       e-mail -- that the discussion of the  
14       three-drug protocol was in the form of this  
15       e-mail, and that this individual expressed  
16       possible issues with the use of midazolam as  
17       described in this e-mail.

18      Q.       Did you dismiss this e-mail?

19      A.       By "dismiss," what do you mean?

20      Q.       Disregard it?

21      A.       No, I didn't disregard it.

22      Q.       Did you consider this e-mail important  
23       information?

24      A.       I did.

25      Q.       What action did you take as a result

1 of this e-mail?

2 A. Well, I think the action that I took  
3 had been, again, in considering the protocol  
4 and considering the three-drug protocol with  
5 midazolam.

6 Q. Uh-huh.

7 A. My discussions with both officials in  
8 the Department, officials outside the  
9 Department, professionals outside the  
10 Department, as well as officials in other  
11 states, discussions relative to the subject  
12 matter of this paragraph regarding midazolam  
13 and the experiences that other people had  
14 seen regarding the use of midazolam obviously  
15 was in my mind. And there was some questions  
16 I wanted to answer for myself.

17 Q. I want to take that apart a little  
18 bit, if I might. So as a result of learning  
19 about this -- the contents of this e-mail,  
20 you took it upon yourself to seek out  
21 additional information from other members of  
22 the Department?

23 A. Yes.

24 Q. And other Corrections officials  
25 outside the state of Tennessee?

1 A. Correct.

2 Q. And expert witnesses in the area of  
3 lethal injection chemicals?

4 A. Well, I'm not sure if I would call  
5 them experts in the effects of lethal  
6 injection chemicals or the use of lethal  
7 injection chemicals, but people who I relied  
8 on as reliable and people who had firsthand  
9 knowledge of the use of midazolam.

10 Q. And when you say that you relied upon  
11 them, what about them made them reliable?

12 A. In some cases, their profession.

13 Q. And what do you mean --

14 A. In some --

15 Q. -- by that?

16 A. Their training, their -- their  
17 positions, credibility --

18 Q. So are you saying --

19 A. -- regarding -- I'm sorry, go ahead.

20 Q. When you say their credibility, are  
21 you -- and, again, I'm not asking you to tell  
22 me who it was.

23 A. Sure.

24 Q. Are you saying that you sought out --  
25 that you consulted with individuals who have

1      experience using midazolam in their practice  
2      professionally?

3      A.        In some cases, that could be -- that  
4      could be true.

5      Q.        So there's more than one person that  
6      you consulted?

7      A.        True. Yes, absolutely.

8      Q.        How many people?

9      A.        I don't know the exact number. I  
10     didn't keep a list and don't know the -- the  
11     exact number of people, but it's several.

12     Q.        More than a half dozen?

13     A.        Several would -- yeah, I would say  
14     probably close to between, I don't know, ten  
15     and 20, somewhere in that neighborhood.

16     Q.        Did you take notes of those  
17     conversations?

18     A.        No.

19     Q.        Did you share the information you  
20     learned from those conversations with anyone  
21     else within TDOC?

22     A.        Not that I'm aware of.

23     Q.        You kept it to yourself?

24     A.        (Witness moves head up and down.)

25     Q.        You're nodding?

1 A. Pretty much so.

2 Q. You're nodding in the affirmative. So  
3 you obtained this information but did not  
4 share it with others?

5 A. I obtained this information in helping  
6 me become, I guess, comfortable with the use  
7 of the drugs that had been listed in the  
8 protocol and to answer any questions that I  
9 might have as Commissioner regarding what  
10 drugs we used.

11 Q. What questions did you have as  
12 Commissioner?

13 A. Well, obviously, I would -- I wanted  
14 to -- I was -- wanted to question this  
15 statement that was made to ensure that, to  
16 the best of my ability, that the drugs we  
17 were using, the first drug, did render an  
18 offender unconscious where they couldn't feel  
19 pain and that it was reliable -- it was a  
20 reliable drug that had been used. And that I  
21 was comfortable using it in our protocol.

22 Q. Did you speak to the author of this  
23 e-mail?

24 A. No, I did not.

25 Q. Did you consider the author of this

1 e-mail reliable?

2 A. I didn't know the author of the  
3 e-mail.

4 Q. Did you try to find out who the author  
5 was?

6 A. I did ask someone about that and was  
7 provided an answer. But to be honest with  
8 you, today I could not tell you their  
9 position, the author's position, of what his  
10 job was or what his title was.

11 Q. If you look down at the footer on that  
12 e-mail -- and I'm going to have to pull out  
13 my glasses. I don't know if you have....

14 The footer uses a confidentiality  
15 provision that states the document -- the  
16 "document may contain information covered  
17 under the Privacy Act," et cetera, et cetera,  
18 basically citing the HIPAA provisions. That  
19 confidentiality provision is not a  
20 confidentiality provision that accompanies a  
21 TDOC e-mail; is that correct?

22 A. Regarding HIPAA?

23 Q. Yes.

24 A. I don't understand --

25 Q. Yeah.

1 A. -- your question.

2 Q. In other words, this e-mail looks like  
3 it came from somebody outside of TDOC. Would  
4 you agree? Because it doesn't use the same  
5 confidentiality language that the TDOC  
6 e-mails use.

7 A. Yes, it's my understanding that that  
8 e-mail did not come from somebody within  
9 TDOC.

10 Q. And are you aware, sir, that the  
11 exchange -- the e-mail chain to which this is  
12 attached makes it appear as if this is the  
13 person who provided you with the midazolam  
14 that expired on June 1st, 2017?

15 A. I'm not sure.

16 Q. But you did not contact this person?

17 A. No.

18 Q. Why did you not consider this person  
19 reliable?

20 A. Well, I'm not -- I don't know that I  
21 had a question --

22 MR. SUTHERLAND: I'm going to  
23 object because the Court has said that you  
24 can ask what he -- what he did when he got  
25 the information. Why is not part of what --

1 MS. HENRY: I disagree with your  
2 objection, but it is noted.

3 BY MS. HENRY:

4 Q. Why did you not contact this  
5 individual?

6 A. Well, I mean, first of all, he'd  
7 already stated what his opinion was here --

8 Q. Uh-huh.

9 A. -- or his statement.

10 Q. Right.

11 A. I wanted to talk to people who I  
12 personally knew who I felt was reliable, and  
13 I did not know this individual.

14 Q. Did you do anything to ascertain  
15 whether or not this individual had sufficient  
16 background, training and experience with  
17 midazolam, to be a reliable source?

18 A. I don't remember that I did. Again, I  
19 can't remember the person's -- his exact role  
20 or what his job was or who he was. I would,  
21 again, make the assumption that my staff, in  
22 talking to him in -- in an effort to find the  
23 drug, that he would have some knowledge of  
24 the drug itself that -- that's in question.

25 Q. Did you have any reason to disbelieve

1 the statements made in this e-mail?

2 A. No reason to disbelieve it, no.

3 Q. All right. But you preferred to  
4 contact people who you knew personally?

5 A. I preferred to contact people who I  
6 knew personally as being individuals that I  
7 trusted would have firsthand knowledge of the  
8 use of the drug and would be able to tell me  
9 a firsthand version of how the drug  
10 performed.

11 Q. And what about those individuals gave  
12 you trust?

13 MR. SUTHERLAND: You -- just so  
14 we're clear: We're staying away from  
15 anything close to identity.

16 MS. HENRY: Right.

17 BY MS. HENRY:

18 Q. I'm not asking for identity. I'm just  
19 asking, what about them gave you a sense of  
20 trust?

21 A. In some cases it was their -- again,  
22 their profession. In some cases, it was  
23 their role in their job in a particular  
24 field. In some cases, it was their position  
25 in government operations and -- and....

1 Q. What would a position in government  
2 operations have to do with whether or not an  
3 individual had reliable knowledge about the  
4 drug midazolam?

5 A. Their experience in the job and their  
6 knowledge of lethal injection procedures.

7 Q. I'm going to tell you what I assume,  
8 because I'm trying to stay away from getting  
9 into confidentiality, but I don't want to  
10 make an assumption that's wrong and I also  
11 don't want to belabor this line of  
12 questioning.

13 What I'm hearing you say about that  
14 last category of people is that you were  
15 interested in talking to individuals who had  
16 information about carrying out a lethal  
17 injection but not specifically about  
18 experience with the use of midazolam. In  
19 other words, you wanted to talk to people who  
20 knew about three-drug protocol, but you  
21 weren't specifically interested in their  
22 experience with midazolam?

23 A. I'm not -- not only knew about a  
24 three-drug protocol, but had had enough  
25 knowledge about its use and had personally

1 had experience with its use in a correctional  
2 setting.

3 Q. Okay. And so, again, without telling  
4 me which states, it sounds like you're  
5 telling me you wanted to talk to other  
6 individuals who had experienced, gone  
7 through, witnessed an execution that used  
8 midazolam?

9 A. Correct.

10 Q. And they would be able to tell you  
11 about what they witnessed with their naked  
12 eye?

13 A. They would be able to tell me what  
14 they witnessed, what they -- as well as other  
15 information that they would have at their  
16 disposal that they could share with me, yes.

17 Q. And what was that information?

18 A. That could be, again, what they  
19 personally witnessed, reports or information  
20 that they would have regarding the lethal  
21 injection protocol.

22 Q. I heard you say "reports." Did they  
23 share with you reports?

24 A. No.

25 Q. Did they provide you with an oral

1 summary of those reports?

2 A. No. I wouldn't say that, no.

3 Q. So what was the significance of the  
4 reports?

5 A. Again, discussions with people who I  
6 trusted as reliable to provide me answers to  
7 questions related to the use of midazolam.

8 Q. Again, I'm just trying to make sure  
9 I'm not misunderstanding your question [sic].  
10 When you mentioned reports, are you saying  
11 you found those individuals to be reliable  
12 because you assumed they received reports,  
13 but you didn't specifically ask about the  
14 reports? Or are you saying that they told  
15 you about the reports?

16 A. They shared with me their -- they  
17 shared with me information that they had  
18 regarding the use of the three-drug protocol  
19 and both their experiences, what they  
20 observed, and information that was relative  
21 to them and also to me regarding the process.

22 Q. And what was that information that was  
23 relevant to you?

24 A. As to whether or not midazolam in  
25 these incidents basically rendered somebody

1 unconscious, and what effects, if any, they  
2 may have witnessed or observed during the  
3 process of an execution.

4 Q. And what did you learn that was  
5 relevant to you?

6 A. I learned that midazolam was a -- in  
7 my opinion, a viable option that had worked  
8 in other states.

9 Q. What do you mean "had worked"?

10 A. That had, for the most part, rendered  
11 people unconscious and performed as it was  
12 intended to perform in a three-drug protocol.

13 Q. What do you mean: "For the most part  
14 rendered someone unconscious"?

15 A. Well, that basically that when  
16 administered correctly, that it rendered the  
17 offender unconscious in -- in the -- in those  
18 cases and -- where they could basically  
19 provide a level of confidence that the  
20 offender was unconscious and unable to feel  
21 pain.

22 Q. What about the quality of that  
23 information that you received from  
24 individuals who you knew who had participated  
25 in executions made that information more

1 reliable to you than the information  
2 contained in the September 7th, 2017 e-mail?

3 A. Again, it was people that I knew,  
4 people that -- people that had firsthand  
5 knowledge and who had been directly involved  
6 and who I trusted as a reliable source.

7 Q. So, again, I want to define "firsthand  
8 knowledge" because I think we're talking  
9 about firsthand knowledge in two different  
10 ways.

11 There's firsthand knowledge that is  
12 observing midazolam used in a lethal  
13 injection execution, and then there's  
14 firsthand knowledge of the chemical  
15 properties and use of midazolam.

16 Would you agree with me those are two  
17 separate things?

18 A. Absolutely.

19 Q. And sounds to me like as a result of  
20 reading -- or receiving the contents of this  
21 e-mail, the action you took was to consult  
22 with the people in that first category, the  
23 individuals who have firsthand knowledge of  
24 midazolam being used in a lethal injection  
25 execution; is that correct?

1 A. That's correct.

2 Q. But you did not consult with people in  
3 that second category, which are individuals  
4 who are familiar with the chemical  
5 properties -- I think they call it  
6 pharmacokinetics -- of the drug midazolam; is  
7 that correct?

8 A. So who would those people in the  
9 second category be? Give me an example.

10 Q. Sure.

11 So that would encompass, for example,  
12 a pharmacologist or an anesthesiologist or a  
13 medical doctor or a nurse practitioner or a  
14 nurse anesthetist.

15 Did you contact anyone in those  
16 categories?

17 A. I'm trying to remember. I spoke to  
18 medical professionals about -- inquiring with  
19 medical professionals also, yes. Physicians  
20 basically.

21 Q. And when you say "physicians," are we  
22 talking a general practitioner, a medical  
23 examiner? When you say "physician," can you  
24 provide me....

25 A. A regular -- yeah, not -- not a -- not

1 an anesthesiologist or a pharmacologist or  
2 whatever. Medical physicians regarding --  
3 with that, the use of midazolam.

4 Q. And in what context did this occur?  
5 And let me give you an example. If I'm at a  
6 soccer game and I'm asked what am I working  
7 on right now, the topic might come up and  
8 there might be somebody at the soccer game  
9 who's a parent of another child, who's a  
10 doctor.

11 A. Uh-huh.

12 Q. And I might engage in a conversation  
13 with them about midazolam. Or there's  
14 actually contacting someone in their  
15 professional capacity specifically seeking  
16 them out to ask this question.

17 A. Uh-huh.

18 Q. Did the conversation you have with  
19 medical professionals occur in that more  
20 casual atmosphere, or did it occur in a very  
21 deliberate, specific, professional  
22 atmosphere?

23 A. Well, I would say it was not in a --  
24 it was not in a formal request for  
25 information --

1 Q. Uh-huh.

2 A. -- in any -- by any means, but it was  
3 my attempt --

4 Q. Uh-huh.

5 A. -- to speak with people who, in some  
6 cases, had medical training, who had what I  
7 would consider a professional who had  
8 knowledge of the use of midazolam and its  
9 effects --

10 Q. Uh-huh.

11 A. -- in the process to help me make the  
12 decision regarding the three-drug protocol.

13 Q. And I don't mean to belabor this point  
14 and I know you're being super careful and so  
15 am I. But, again, I'm hearing this  
16 information and I'm picturing myself at my  
17 dentist having some work done and they're  
18 giving me some Versed, and I'm saying, "Hey,  
19 is this the stuff they use in the lethal  
20 injection? Is it going to work?"

21 Are we talking about that kind of a  
22 conversation where you're talking to a doctor  
23 who you know and it just happens to come up,  
24 or are we talking about "I called this person  
25 because they're a physician and I wanted to

1 ask them about midazolam"?

2 A. Yeah, I mean, my specific point in  
3 talking to these individuals was to get their  
4 opinion or to get their -- their knowledge of  
5 the use of midazolam --

6 Q. Uh-huh.

7 A. -- and its effects.

8 Q. And what about those medical  
9 professionals gave you greater trust in their  
10 opinions than the author in the  
11 September 7th, 2017 e-mail?

12 A. Well, I think, again, I knew these  
13 people and I trusted their opinion, their  
14 professional opinion and their -- both in the  
15 capacity of a medical professional as well as  
16 individuals who were serving in an official  
17 capacity, that I knew would provide adequate  
18 information and reliable information.

19 Q. Uh-huh.

20 A. Not something that was read in a  
21 newspaper article or -- but actual  
22 information that I would use in helping me  
23 make a determination.

24 Q. Did you ask those medical  
25 professionals to provide you with any

1 literature or referrals to other medical  
2 professionals with more relevant experience?

3 A. No, I did not.

4 Q. For how long a period of time -- you  
5 said 10 to 20 conversations with a number of  
6 different people. Over what period of time  
7 did those conversations take place?

8 MR. SUTHERLAND: That's been asked  
9 and answered. Between September and January.

10 MS. HENRY: I don't think that was  
11 his answer about the period of time of the  
12 conversation.

13 MR. SUTHERLAND: I think you  
14 answered the question for him. Something  
15 between September and January.

16 MS. HENRY: That was when he  
17 learned about the e-mail, not about when he  
18 had the conversations.

19 BY MS. HENRY:

20 Q. And I certainly don't want to provide  
21 your answers, so let me be clear since  
22 Mr. Sutherland and I have a disagreement.

23 Over what period of time did those  
24 conversations occur?

25 A. I would say for a few months,

1 probably, and I don't remember specifically  
2 the amount of time. It's not something I did  
3 in a week, okay? So it was -- it was over a  
4 period of time.

5 Q. Okay. And what did you do as the  
6 Commissioner of Correction with the  
7 information that you obtained from these  
8 conversations?

9 A. I used it to make a decision regarding  
10 my being confident in the three-drug protocol  
11 that's in that --

12 Q. Uh-huh.

13 A. -- in the procedures.

14 Q. And who did you share, if anyone, the  
15 information you learned from these  
16 conversations with?

17 MR. SUTHERLAND: Be careful about.

18 MS. HENRY: I'm sorry. Let me --

19 BY MS. HENRY:

20 Q. Did you share -- I'll strike that,  
21 Mr. Sutherland is right. I don't want to ask  
22 names.

23 Did you share the information that you  
24 learned from these conversations with anyone  
25 at TDOC?

1   A.       So, again, the information that I  
2   obtained, I used in making my decision. I  
3   did not go out and have discussions with  
4   people about, "Well, this person told me this  
5   or this person told me that." I used it to  
6   make the decision.

7           And what information I would have  
8   shared was that I would be confident in the  
9   protocol that we have established as being a  
10   -- an effective, efficient protocol based on  
11   the drugs that we have available.

12   Q.       What is effective and efficient to  
13   you?

14   A.       Effective and efficient would be a  
15   protocol that would basically allow us to  
16   carry out the orders of the Court for  
17   execution, again, using the drugs -- the best  
18   drugs that are available to render a person  
19   unconscious and basically, ultimately stop  
20   their breathing and their -- their heart from  
21   beating and render them dead.

22   Q.       Did you alone make that decision?

23   A.       What decision?

24   Q.       The decision that the midazolam  
25   protocol would render an inmate unconscious.

1 A. I made the decision regarding the  
2 three-drug protocol and the use of midazolam.  
3 That was its purpose. So, yes, that was --  
4 that was my decision.

5 Q. That is the purpose that's used in the  
6 protocol?

7 A. I'm sorry?

8 Q. The purpose that it's used in the  
9 protocol was to render the inmate  
10 unconscious?

11 A. The purpose of one of the drugs that's  
12 in the protocol is to render the offender  
13 unconscious.

14 Q. Well, and that's not the purpose of  
15 the vecuronium or the potassium?

16 A. Well, exactly.

17 Q. So that's the purpose -- that's the  
18 reason that the midazolam is there?

19 A. Yes.

20 Q. Okay. And I want to again explore  
21 this e-mail and the author of the e-mail  
22 without getting into who he or she may be.  
23 But it is of paramount importance to our case  
24 why his or her information was not considered  
25 reliable.

1                   So I'm going to hand you a packet so  
2                   that we can have a clearer copy of that  
3                   September 7th e-mail and sort of trace its  
4                   journey.

5                   MS. HENRY: Ask the court reporter  
6                   to make this our next-lettered exhibit, which  
7                   I believe is R.

8                   (Exhibit R was marked.)

9                   BY MS. HENRY:

10          Q.        Mr. -- or Commissioner Parker, I've  
11                  placed in front of you a packet of e-mails  
12                  that I will represent to you was provided by  
13                  Debra Inglis in response to a November 2017  
14                  Tennessee Public Records Act Request.

15                  It is a compilation of e-mails. The  
16                  first -- this is in the order it was provided  
17                  to us. So the first page is September 7th,  
18                  2017 at 1:39 p.m., reference --

19                  MR. KISSINGER: I'm sorry, Kelley.  
20                  Is this Exhibit R?

21                  MS. HENRY: This is Exhibit R.

22                  MR. KISSINGER: Thank you.

23                  BY MS. HENRY:

24          Q.        Entitled "Update," although "update"  
25                  is misspelled. And the first line there is:

1 "Etomidate, ketamine and sodium  
2 thiopental" -- and that's just for purposes  
3 of our reference.

4 And if you will turn to what is the  
5 fourth page -- the numbers are very tiny at  
6 the bottom of the e-mail -- of that packet.  
7 We see another copy of the September 7th,  
8 2017 e-mail that we've been discussing.

9 Do you see that there?

10 A. I do.

11 Q. And it's a cleaner copy, obviously.

12 A. Yeah.

13 Q. And we see that the subject matter is  
14 still "Update" spelled "U-P-D-T-A-E-"?

15 A. Yeah.

16 Q. And that timestamp is 12:58 p.m. And  
17 if you turn to the page before, Page 5 -- the  
18 next page, Page 5, we see the first -- what  
19 appears to be the first in that e-mail chain,  
20 September 7th, 10:12 a.m. and it says: So  
21 the word from the powers that be is that they  
22 first want to try to find midazolam and then  
23 go from there if there -- this is obviously a  
24 typo -- if there none out there to get.

25 Do you see that there?

1 A. Uh-huh.

2 Q. Is that "yes"?

3 A. I do, yes.

4 Q. And there is a confidentiality notice  
5 at the bottom of that e-mail. The signature  
6 line is blanked out. Is that confident- --  
7 do you recognize that confidentiality notice  
8 to be a confidentiality notice that is used  
9 within TDOC? In other words, does this  
10 appear to be an e-mail from someone inside  
11 TDOC, attempting to obtain drugs?

12 A. (Witness reviews documents.)

13 You know, it could be. I'll say this:  
14 Different individuals have different  
15 confident- -- confidentiality statements. So  
16 it could be. It very well could be.

17 Q. Have you seen that e-mail before?

18 A. I have not.

19 Q. Do you know who the "powers that be"  
20 are?

21 A. I do not.

22 Q. Do you think it's fair to assume that  
23 you're included in the powers that be?

24 A. I could be, if this is an e-mail from  
25 someone in DOC. I've been called that and

1 I've been called worse.

2 Q. Me, too.

3 A. Possibly.

4 Q. So it appears -- again, we'd have to  
5 ask Ms. Inglis since she's the one that  
6 produced this document -- that the e-mail  
7 regarding midazolam not having strong  
8 analgesic effects is the response from the  
9 recipient asking to obtain midazolam.

10 And then you see at the top of the  
11 Page 4 is an e-mail that says: "The places  
12 that it is readily available from, do they  
13 have disclaimer requirements like what" --  
14 redacted -- "hit us with on the Pento"?

15 Do you see that there?

16 A. I do.

17 Q. And then do you see the response to  
18 that e-mail at 1:02 p.m. on Page 3 is: "They  
19 do not. It's from our primary vendor"?

20 A. I see it, yes.

21 Q. Okay. Do you think it's a fair  
22 assumption, sir, then, if someone is saying  
23 that the midazolam is from their prior [sic]  
24 vendor, that the person who's providing the  
25 information about midazolam --

1                   MR. SUTHERLAND: I'm going to  
2 object to having the witness assume anything  
3 about e-mails he didn't write and isn't a  
4 party to.

5                   MS. HENRY: Thanks. The objection  
6 is noted.

7 BY MS. HENRY:

8 Q. Again, we're look -- trying to  
9 understand why the e-mail author of  
10 September 7th, 2017 was discounted, and it  
11 appears from this e-mail chain that the  
12 author of the September 7th, 2017 e-mail is  
13 the individual who provided the drugs for  
14 executions in Tennessee, based on the fact  
15 that he's talking about vendors. And that  
16 would appear to be a pharmacist. So I'm  
17 wondering why the pharmacist who provided the  
18 midazolam is not a reliable source about  
19 midazolam?

20                  MR. SUTHERLAND: He's already  
21 asked and answered this question. He says --

22                  MS. HENRY: Your objection is  
23 noted.

24                  MR. SUTHERLAND: He's already  
25 asked and answered.

1 MS. HENRY: Your objection is  
2 noted.

3 MR. SUTHERLAND: Oh.

4 BY MS. HENRY:

5 Q. Why is a pharmacist not a reliable  
6 source?

7 MR. SUTHERLAND: There's no  
8 testimony he is a pharmacist.

9 MS. HENRY: We'll get there.

10 MR. SUTHERLAND: Or she is a  
11 pharmacist, Kelley. You're asking an  
12 improper question "Why is a pharmacist not  
13 a" -- this isn't -- there isn't -- you have  
14 no information this person's a pharmacist.

15 MS. HENRY: We can take that up in  
16 future discovery but right now we're trying  
17 to deal with these e-mails and what we're  
18 limited to.

19 MR. SUTHERLAND: You're asking --

20 MS. HENRY: If the vendor -- if  
21 the person who is providing drugs -- if the  
22 person who is providing drugs isn't a  
23 pharmacist, well, that's a whole other  
24 constitutional issue now, isn't it?

25 MR. SUTHERLAND: What's your

1 question?

2 BY MS. HENRY:

3 Q. Right now my question is: Why is the  
4 person who provided you the drugs, whoever  
5 they are, not a reliable source of  
6 information about the drugs, just because you  
7 didn't know them?

8 MR. SUTHERLAND: He didn't say  
9 that they weren't reliable. He said that he  
10 did not consult them.

11 MS. HENRY: Your objection is  
12 noted.

13 THE WITNESS: Well -- so am I to  
14 answer the question?

15 BY MS. HENRY:

16 Q. You're to answer.

17 A. So, again, let me just say -- and I  
18 think the point's been made. I am not -- I  
19 didn't say, again, that he wasn't a reliable  
20 source. But there were sources that I felt  
21 like that I knew personally and people who  
22 that I trusted that I personally knew and had  
23 trust and confidence in.

24 So in regards to this individual, I  
25 didn't know who they -- I didn't personally

1 know them. And, again, not saying that it's  
2 not reliable. It was certainly something  
3 that I considered relevant, very relevant,  
4 because I -- again, in my discussions with  
5 other officials and people, that was, again,  
6 some of the subject of my questioning about  
7 the use of the drug and its effect on  
8 individuals in this process.

9 Q. Was there anything that prevented you  
10 from learning, getting to know the person who  
11 wrote this e-mail?

12 A. No. I -- if -- if -- I guess if I had  
13 chosen to go and seek out this individual and  
14 -- I could have that. That's fair, a fair  
15 assumption.

16 Q. So the only difference between the  
17 author of the e-mail and the people you  
18 consulted is that you knew them and had a  
19 personal relationship with them?

20 A. And my level of confidence in them in  
21 my position as Commissioner and the decisions  
22 that I had to make. Certainly, I would --  
23 felt more comfortable in people who I  
24 personally -- and when I say "personally  
25 knew," people that I knew in their position

1 and felt confident that they would provide me  
2 accurate information regarding the drug.

3 Q. And I guess I'm trying to figure out  
4 why knowing someone personally gives you more  
5 confidence in them than someone you don't  
6 know personally.

7 A. I guess it's different for different  
8 people.

9 Q. So this individual who is e-mailing  
10 back and forth with someone in TDOC about  
11 obtaining the drugs and providing the drugs  
12 also -- we'll get back to him or her.

13 I'm going to move now to discussing  
14 pentobarbital. I'm going to hand you, sir,  
15 what I'm going to ask the court reporter to  
16 mark as Deposition Exhibit S.

17 MR. KISSINGER: That's my fault  
18 totally. iPhones. I hate iPhones.

19 (Exhibit S was marked.)

20 MS. HENRY: The record should  
21 reflect it's now approximately 2:13. And we  
22 have -- three hours and 20 minutes of the  
23 deposition have elapsed.

24 BY MS. HENRY:

25 Q. Sir, I've handed you

1 Deposition Exhibit S, which is an agreement  
2 titled "Agreement between Riverbend Maximum  
3 Security Institution Tennessee Department of  
4 Correction" and there's a redaction and the  
5 word "Pharmacist."

6 Do you see that?

7 A. I do.

8 Q. If you'll flip to the third page, do  
9 you see where that contract bears the  
10 signature of Derrick Schofield?

11 A. I do.

12 Q. And what is the date?

13 A. September 25th, 2014.

14 Q. And does it appear that there was also  
15 a signature of a pharmacist that's been  
16 redacted?

17 A. Yes.

18 Q. And the pharmacist appears to have  
19 dated this contract September the 21st of  
20 2014?

21 A. Yes.

22 Q. If you'll flip to Page 1 of this  
23 contract between the pharmacist and TDOC, do  
24 you see where the contract between TDOC and  
25 the pharmacist requests the pharmacist to

1 provide drugs necessary to carry out an  
2 execution by lethal injection at Roman I,  
3 Paragraph 1?

4 A. Yes.

5 Q. And Paragraph 2, that the pharmacist  
6 will compound the drugs necessary to carry  
7 out an execution in a clean, sterile  
8 environment.

9 Do you see that?

10 A. What number is that, I'm sorry?

11 Q. Roman I, No. 2.

12 A. Yes, I do.

13 Q. And that under 3: "Arrange for  
14 independent testing of the compounded  
15 solution for potency, sterility and  
16 endotoxins"?

17 A. Yes.

18 Q. Have you seen this contract before?

19 A. This particular contract, I can't  
20 recall that I have, no.

21 Q. If you'll flip to Page 2, Roman III,  
22 Paragraph 1: "This agreement shall be  
23 effective immediately upon acceptance and  
24 signing by both parties and shall remain in  
25 effect until terminated by either party."

1                   Do you see that?

2   A.        I do.

3   Q.        And Paragraph 2: "This agreement may  
4   be terminated by either party by giving  
5   written notice to the other party at least 30  
6   days in advance. In that event, the  
7   pharmacist shall be entitled to receive just  
8   and equitable compensation for any  
9   satisfactory authorized work completed as of  
10   the termination date."

11                  Do you see that?

12   A.        I do.

13   Q.        And so by the terms of this contract,  
14   it remains in force and effect until it's  
15   terminated, correct?

16   A.        I'm assuming so, based on what I've  
17   read.

18   Q.        Has TDOC terminated this contract with  
19   the pharmacist who signed it?

20   A.        I would have to confer with the Legal  
21   team and the people who handle contracts.

22   Q.        Do you have -- have you received a  
23   notice that this individual terminated his  
24   contract or her contract?

25   A.        Not that I recall.

1 Q. And you would agree with me that in  
2 September of 2014, the lethal injection  
3 chemical was compounded pentobarbital?

4 A. Yes.

5 Q. Going to hand you now, sir, a document  
6 that I'm going to ask the court reporter to  
7 mark as Deposition Exhibit T.

8 (Exhibit T was marked.)

9 BY MS. HENRY:

10 Q. And, sir, that is a printout of a  
11 newspaper article from the Tennessean dated  
12 March 3rd, 2017. And if you could look in  
13 the body of the e-mail -- of the -- I'm  
14 sorry, the article, the fourth full paragraph  
15 that starts with "Inglis."

16 And there that paragraph reads:

17 "Inglis, who also serves as Deputy  
18 Commissioner of Administration for the  
19 Department told reporters Thursday after a  
20 tour of Riverbend Maximum Security  
21 Institution in Nashville that the  
22 Department," quote, "'anticipates we could  
23 carry out,'" end quote, "an execution by  
24 lethal injection as needed. She said that  
25 means the State could obtain the drug closer

1 to the time of the execution. However,  
2 Inglis didn't elaborate on how the Department  
3 would actually get those drugs."

4 Do you see that there?

5 A. I do.

6 Q. Do you believe that Ms. Inglis --  
7 Ms. Inglis is also the -- strike that  
8 question.

9 Ms. Inglis is also your General  
10 Counsel; is that right?

11 A. Correct.

12 Q. And she made public statements about  
13 the availability of pentobarbital on March  
14 the 3rd, 2017; isn't that correct?

15 A. Is this when the art -- is this when  
16 the statement was made, or is this when the  
17 article was printed?

18 Q. Well, the article says: The Tennessee  
19 prison system does not have drugs needed.

20 That's what they said. It starts: "The  
21 State will be ready to administer lethal  
22 injection," said Tennessee Department of  
23 Correction General Counsel Debbie Inglis.

24 And then the next sentence -- I'm  
25 sorry. The next paragraph, Paragraph 5:

1       " 'We cannot discuss how we will procure the  
2       lethal injection chemicals,' " Department  
3       spokeswoman Neysa Taylor said in response to  
4       follow-up questions e-mailed Thursday."

5       A.       Okay.

6       Q.       And I'll represent to you that  
7       March the 3rd, 2017 was a Thursday.

8       A.       Okay.

9       Q.       Neysa Taylor is the Public Information  
10      Officer --

11      A.       She is.

12      Q.       -- for the Department?

13      A.       Yes. Neysa, N-e-y-s-a.

14      Q.       So on March the 3rd, 2017, Ms. Inglis  
15      publicly represented that the Department  
16      could obtain pentobarbital; isn't that true?

17      A.       Yes, according to this. That's --  
18      that's correct.

19               And this is an article from the  
20      Tennessean, right?

21      Q.       Yes, sir.

22      A.       A newspaper --

23               MR. SUTHERLAND: Does it say  
24      "pentobarbital"?

25               THE WITNESS: It doesn't.

1 BY MS. HENRY:

2 Q. March the 3rd, 2017, did the -- was  
3 the Department looking at midazolam March the  
4 3rd, 2017?

5 MR. SUTHERLAND: I'm just asking:  
6 Does it say "pentobarbital" on there?

7 MS. HENRY: It says -- no. It  
8 says the Department can get the drug.

9 MR. SUTHERLAND: What -- can I see  
10 it?

11 THE WITNESS: Yeah, I'm sorry  
12 (tendering).

13 MR. SUTHERLAND: What -- where are  
14 we talking about?

15 THE WITNESS: It's right here.  
16 Fourth paragraph.

17 MS. HENRY: Paragraph 4.

18 BY MS. HENRY:

19 Q. Let me back up, Commissioner. You  
20 adopted midazolam as an option in your  
21 protocol on January 8, 2013, correct?

22 A. Correct.

23 Q. E-mails that we'll get to later will  
24 show that the Department was continuing to  
25 search for pentobarbital in July of 2017 and

1       that the Department did not begin looking at  
2       midazolam until September of 2017.

3       A.       Okay.

4       Q.       As of March 2017, the only protocol  
5       that was in place in Tennessee was a  
6       single-drug pentobarbital protocol; is that  
7       correct?

8       A.       Correct.

9       Q.       So is it a fair assumption, then, on  
10      March 3rd, 2017, when the Department wasn't  
11      looking at midazolam and only had a  
12      single-drug compounded pentobarbital  
13      protocol, Ms. Inglis was talking about the  
14      ability to get pentobarbital?

15      A.       Yes.

16      Q.       And it would make sense that the  
17      Department didn't have compounded  
18      pentobarbital at that time because there were  
19      no executions scheduled at that time --

20      A.       Exactly.

21      Q.       -- correct?

22      A.       Yes, that's true.

23      Q.       And under the protocol, you don't  
24      order the compounded pentobarbital until an  
25      execution date is set?

1 A. Right.

2 Q. Now I want to turn to the documents  
3 that your counsel produced in response to a  
4 Motion to Compel.

5 MS. HENRY: And I'm going to ask  
6 the court reporter to mark this packet as  
7 Deposition Exhibit U.

8 (Exhibit U was marked.)

9 BY MS. HENRY:

10 Q. As I sing the alphabet song in my  
11 head.

12 Commissioner Parker, this packet of  
13 materials was provided by your counsel in  
14 response to an order from Chancellor Lyle to  
15 provide certain documents to Plaintiffs'  
16 counsel.

17 Have you seen this packet before?

18 A. I have.

19 Q. And when did you see it?

20 A. I've seen it in the last month. I've  
21 seen it -- I saw it when the update was given  
22 also.

23 Q. I'm sorry, what update?

24 A. When we used this to brief staff on  
25 the -- the protocol.

1 Q. So Pages 1 through 17 of the  
2 production appear to be a PowerPoint. And  
3 you have seen the PowerPoint in previous --

4 A. Yes.

5 Q. You saw it at the time that it was  
6 actually presented?

7 A. Yes.

8 Q. And that date appears to be  
9 August 31st, 2017?

10 A. Correct.

11 Q. There are some additional documents  
12 beginning at Bates No. 19. Had you seen  
13 those documents prior to within the past  
14 month?

15 A. (Witness reviews documents.)

16 I haven't seen each one specifically.  
17 I -- I saw a packet that had this information  
18 in it, along with this printout (indicating),  
19 in my office.

20 Q. Did you gather these documents to  
21 provide to counsel for production, or did  
22 someone else gather these documents?

23 A. Someone else gathered these documents.

24 Q. Okay. And that someone else was a  
25 TDOC employee?

1 A. Yes.

2 Q. I'd like to first focus on the  
3 PowerPoint, which is titled "Lethal Injection  
4 Update, August 31st, 2017."

5 Without providing any names, what was  
6 the purpose of this PowerPoint?

7 A. To give officials in the Department an  
8 -- updates regarding the lethal injection  
9 protocols in Tennessee.

10 Q. Are you the author of this PowerPoint?

11 A. No, not totally, no.

12 Q. Was this a PowerPoint that was  
13 presented to you?

14 A. It was.

15 Q. So you were the intended audience or  
16 part of --

17 A. I was part of the intended audience.  
18 Yes, that's fair to say.

19 Q. Was this presented by somebody -- a  
20 person who has personal knowledge of the  
21 contents of the PowerPoint?

22 A. Yes. Yes.

23 Q. And is that -- again, without  
24 providing the name, is the person who put  
25 together this PowerPoint the person who has

1      been -- who you have delegated the duty of  
2      obtaining the lethal injection chemicals?

3      A.      I think this PowerPoint was put  
4      together by probably a couple of officials in  
5      DOC, one of which would be the person who  
6      assists in the process of obtaining drugs,  
7      yes.

8      Q.      The first page of the PowerPoint is  
9      just a general explanation of why it's being  
10     placed -- put together. Was this presented  
11     at a meeting that was called specifically to  
12     discuss lethal injection in Tennessee?

13     A.      This was presented -- yes, it was.  
14     That was the purpose of the meeting.

15     Q.      And the PowerPoint at Page 3 provides  
16     the demographics of Tennessee's death row.  
17     And it -- on Page 4, it states that there are  
18     no execution dates scheduled in 2017.  
19     Provides two execution dates in 2018, but  
20     notes that those cases have additional steps  
21     in the legal process.

22            And so they were not, as we call them,  
23     real execution dates; is that correct?

24     A.      That's correct.

25     Q.      And so the Department was not

1 concerned about providing -- gathering lethal  
2 injection drugs for an execution date of  
3 January 3rd, 2018 or May 9th, 2018, correct?

4 A. Correct.

5 Q. The next page, Page 5, sets forth the  
6 law, the statutory law on lethal injection;  
7 is that correct?

8 A. It is.

9 Q. The next page, Page 6, discusses that  
10 alternative means of execution shall -- and  
11 that's in bold -- be electrocution if the  
12 chemicals for the LIC are unavailable and/or  
13 lethal injection is found to be an  
14 unconstitutional method of carrying out the  
15 sentence of death.

16 Is that correct?

17 A. That's correct.

18 Q. The next page, Page 7, describes the  
19 Tennessee protocol as of August 31st, 2017 as  
20 being compounded pentobarbital in an  
21 injectable solution, correct?

22 A. Correct.

23 Q. The next page, Page 8, is titled  
24 "Search for Source;" is that correct?

25 A. Correct.

1 Q. And there, the author of the  
2 PowerPoint describes that they reached out to  
3 someone who they understood to have a source,  
4 but that someone was unwilling to share the  
5 identity of their source or provide our  
6 contact information; is that correct?

7 A. That's correct.

8 Q. Page 9, again, is a summary of the  
9 steps that that individual took, correct?

10 A. Correct.

11 Q. The third bullet point states:

12 "Several pharmacies declined to be involved  
13 in any way. Finally a compounding pharmacy  
14 agreed to compound the LIC and aid in the  
15 search for a source," correct?

16 A. Correct.

17 Q. The next page, Page 10, states:

18 "There were 100 potential sources, and then  
19 none of those worked for one of the following  
20 reasons."

21 Those reasons are given, correct?

22 A. Correct.

23 Q. The next page, Page 11, discusses the  
24 possibility of importing the chemical from  
25 overseas, correct?

1 A. Correct.

2 Q. Was there discussion at the Department  
3 of Correction about importing pentobarbital  
4 from overseas?

5 A. There was.

6 Q. And what was the result of those  
7 discussions, or what did you discuss?

8 A. Basically, that we were looking at all  
9 available -- potential available options to  
10 find a source for pentobarbital, to include  
11 all legal means both in the U.S. and outside  
12 the United States.

13 Q. And so you were looking for drugs  
14 overseas. Do you know where overseas?

15 A. No, not particular. Just, again, any  
16 legal method of obtaining the -- the chemical  
17 necessary for the protocol, both in the  
18 United States and -- as well as outside the  
19 United States.

20 Q. And that next -- that bullet point  
21 paragraph there sets out the CFR governing  
22 the DEA's authority to issue permits for the  
23 importation of Schedule II narcotics, i.e.,  
24 pentobarbital, when it is necessary to  
25 provide for a legitimate need of the U.S. and

1 the domestic supply is inadequate, correct?

2 A. Uh-huh, correct.

3 Q. And then we have redactions. And  
4 there it describes a meeting with agents.

5 Do you know what that meeting was  
6 about on Page 12?

7 A. Yes, I know what it's about.

8 Q. Can you please tell us?

9 A. I don't know that I can tell you, not  
10 without identifying who the agents work for.

11 MR. SUTHERLAND: Are you asking  
12 what the meeting was about?

13 BY MS. HENRY:

14 Q. I'm trying to figure it out. Early --  
15 the page before talks about the DEA or the  
16 DEA -- are these DEA agents?

17 MR. SUTHERLAND: We're not going  
18 to talk about the identities of people.

19 MS. HENRY: This has to do with  
20 availability. And if you don't want to rely  
21 on that page of the discovery, I'm fine with  
22 not relying on it. If you're going to rely  
23 on it in your trial, I want to ask about it.

24 MR. SUTHERLAND: We can ask the  
25 Court about it. But we're not going to

1 identify individuals.

2 MS. HENRY: I don't think DEA  
3 agents identifies who they are. I'm not  
4 asking for people inside the Department of  
5 Correction. These are individuals who I  
6 believe informed someone that there is a  
7 supply of pentobarbital available in the  
8 United States. That's what it says there.

9 BY MS. HENRY:

10 Q. Do you agree that's what it says?

11 A. You asking me?

12 Q. Yes.

13 A. Yes.

14 Q. All right. So agents from some place  
15 said that there is a supply of pentobarbital  
16 available in the United States?

17 A. Correct.

18 Q. And counsel objects to me asking  
19 anything further on that page, so I'll move  
20 on.

21 Page 13 refers to: "In the course of  
22 researching the possibility of  
23 importation" -- redacted -- "became aware of  
24 a Federal case in Texas wherein the FDA had  
25 ceased a shipment of drugs, chemicals being

1 imported by the Texas Department of  
2 Corrections. Texas DOC filed suit in Federal  
3 District Court for the release of the  
4 shipment."

5 "There has been -- "To this date,  
6 there has not been any resolution to this  
7 case."

8 Have you been following the case in  
9 Texas regarding the importation of  
10 pentobarbital?

11 A. I have not personally. My staff has.

12 Q. And that is because if that drug  
13 becomes available, you would like to obtain  
14 pentobarbital through a similar source?

15 A. Again, the -- the search for  
16 pentobarbital is ongoing. If we had a  
17 credible source, we would follow up on it,  
18 yes. So I guess to answer your question,  
19 yes.

20 Q. The next paragraph states that, again,  
21 redacted name "is now researching FDA  
22 regulations as a result of this case to  
23 determine what, if any, process can be  
24 undertaken to obtain FDA approval for the  
25 importation of pentobarbital. Thus far the

1 approval process appears to be very  
2 cumbersome unless an exception can be claimed  
3 to lessen the burden."

4 So it appears that someone in the  
5 Department is researching ways to get the FDA  
6 to permit the importation of pentobarbital;  
7 is that correct?

8 A. Again, I think the Department is  
9 looking at all available options to find  
10 pentobarbital.

11 Q. So the answer to my question is yes?

12 A. When you say actively pursuing it, I  
13 don't know if it's something they're looking  
14 at every day, but it's something that's  
15 certainly on our radar that we would  
16 entertain if the possibility becomes a viable  
17 option.

18 Q. Would you agree with me that  
19 "cumbersome" does not mean impossible?

20 A. True.

21 Q. Just difficult?

22 A. True.

23 Q. Are you aware, sir, that yesterday the  
24 Texas Department of Correction was ordered to  
25 disclose their source of pentobarbital

1      publicly?

2      A.       No, I'm not.

3      Q.       Assuming that Texas complies with the  
4      Court order from the highest Court in Texas  
5      and they identify their source of  
6      pentobarbital, will the Tennessee Department  
7      of Correction contact that source in an  
8      effort to obtain pentobarbital?

9      A.       That would be a discussion I would  
10     have with my staff and -- absolutely, again,  
11     we will search out all options to find  
12     pentobarbital, so I don't know why we  
13     wouldn't. Yes.

14     Q.       Okay. The next page discusses  
15     Arkansas's attempt to perform seven  
16     executions in the span of seven days because  
17     of their difficulty in obtaining a source for  
18     their LIC.

19            But in Arkansas, are you aware that  
20     those seven executions involve the use of  
21     midazolam?

22     A.       Am I aware?

23     Q.       Yes.

24     A.       Yes, I am.

25     Q.       So the difficulty in obtaining a

1 source for LIC is not limited to  
2 pentobarbital; isn't that true?

3 A. That's correct.

4 Q. And that is because midazolam has  
5 to --

6 MR. SUTHERLAND: Ms. Henry, you  
7 know, I don't want to be here all night, but  
8 you're just -- you've led all morning and all  
9 afternoon. It's -- I mean, he can --

10 MS. HENRY: Leading isn't a valid  
11 objection in a deposition or with an adverse  
12 witness. But your objection is noted.

13 MR. SUTHERLAND: You seem to think  
14 he's an adverse witness?

15 MS. HENRY: Yes, I do.

16 MR. SUTHERLAND: All right.

17 MS. HENRY: He's the Defendant.  
18 He's a party. He's an adversary.

19 MR. KISSINGER: He's a party  
20 opponent.

21 MR. MITCHELL: Absolutely.

22 MR. KISSINGER: That's the  
23 definition of adverse.

24 MS. HENRY: We've got six hours,  
25 and I'm moving it along.

1 BY MS. HENRY:

2 Q. With respect to midazolam -- well, let  
3 me go back to pentobarbital.

4 Are you aware that the difficulty in  
5 obtaining pentobarbital is because the  
6 manufacturers of pentobarbital had in place  
7 distribution controls on their contracts  
8 whenever they sell pentobarbital to their  
9 suppliers?

10 A. I am, yes.

11 Q. And are you aware that those same  
12 distribution controls are in place for  
13 midazolam?

14 A. I am.

15 Q. And yet some Departments of Correction  
16 are able to get around those distribution  
17 controls for pentobarbital?

18 MR. SUTHERLAND: Objection,  
19 relevancy.

20 THE WITNESS: Yes, I do.

21 BY MS. HENRY:

22 Q. And some Departments of Correction are  
23 able to get around those distribution  
24 controls for midazolam?

25 A. True.

1 Q. In fact, the Tennessee Department of  
2 Correction got around those distribution  
3 controls for midazolam?

4 A. True.

5 Q. How was it that the Department of  
6 Correction was able to get around the  
7 distribution controls for midazolam but not  
8 for pentobarbital?

9 A. Simply because we couldn't find a  
10 source that was willing to sell us the  
11 pentobarbital.

12 Q. So your source is willing to violate  
13 the distribution controls for midazolam but  
14 not pentobarbital?

15 MR. SUTHERLAND: We're not going  
16 to talk about the sources, if they're the  
17 same or different.

18 THE WITNESS: That would be a  
19 question, I guess, for them.

20 BY MS. HENRY:

21 Q. Okay. Well, we'll get back to the  
22 e-mails with the source who talks about  
23 pentobarbital as well as midazolam.

24 A. Okay.

25 Q. Page 15 states that: "Other states"

1 -- again, it's a continuation of the  
2 difficulty. It mentions the Texas case. The  
3 next bullet point states: "Some states are  
4 using LEC chemicals that have come under,"  
5 quote, "harsh" -- I'm using quotes -- "harsh  
6 scrutiny such as Alabama. Alabama's used" --  
7 that's a typo. "Alabama used midazolam in  
8 the recent execution of Robert Melson."

9 Did you take any action to investigate  
10 the harsh scrutiny that Alabama faced after  
11 using midazolam in the execution of Robert  
12 Melson?

13 A. Not particularly, this particular  
14 inmate. I think the -- so to answer your  
15 question regarding this particular inmate,  
16 no, I did not.

17 Q. What is meant by "harsh scrutiny"?

18 A. I take that to be the individuals  
19 questioning the methods of execution and the  
20 drugs used for execution protocols. That  
21 could be generated either by articles in the  
22 paper or individual witness statements or  
23 things like that --

24 Q. Is the harsh --

25 A. -- so the media, primarily, I'm sorry.

1 Q. Sure.

2 Is the harsh scrutiny that's  
3 referenced there on Page 15 with respect to  
4 Alabama's use of midazolam in the execution  
5 of Robert Melson an important consideration  
6 for the Department of Correction in  
7 determining which LIC to use in execution of  
8 Plaintiffs?

9 A. I wouldn't say -- well, I would say  
10 that -- I would say that any references or  
11 accounts would be important information  
12 personally to me.

13 Q. Page 16 of the production, again, from  
14 your lawyers, the last paragraph states:  
15 "There are circumstances where the Federal  
16 Government can step in and orchestrate the  
17 supply of chemicals in situations where  
18 supply is so low and the cost for the  
19 chemical is so high as to make it virtually  
20 unavailable where there is a significant  
21 need."

22 Was that information that was provided  
23 to you by the author or authors of this  
24 PowerPoint?

25 A. Yes.

1 Q. The last -- next page is a graphic of  
2 a question mark and a cartoon figure who  
3 appears to be in a thinking pose; is that  
4 correct?

5 A. Correct.

6 Q. And it appears that at that point,  
7 there was a discussion; is that correct?

8 A. Correct.

9 Q. What was that discussion?

10 A. A general discussion of the PowerPoint  
11 as presented.

12 Q. What -- were there any conclusions  
13 about the Tennessee lethal injection method  
14 made as a result of the PowerPoint that you  
15 received?

16 A. Not any final determinations made that  
17 I remember and -- no.

18 Q. Were there any directives made by you  
19 at this meeting as a result of the PowerPoint  
20 and the discussion that ensued with respect  
21 to the procurement of lethal injection  
22 chemicals?

23 A. No.

24 Q. Were there any directives made by any  
25 other members of the Department -- Tennessee

1      Department of Correction with respect to  
2      procuring lethal injection chemicals as a  
3      result of the PowerPoint?

4      A.       No.

5      Q.       At the conclusion of the PowerPoint,  
6      was there a decision made to pursue midazolam  
7      to the exclusion of pentobarbital?

8      A.       No, not at -- not at the end of this  
9      PowerPoint.

10                  MR. SUTHERLAND: That's been asked  
11      and answered.

12      BY MS. HENRY:

13      Q.       Go -- I'm sorry, your answer was, "No,  
14      not at the end of that PowerPoint"?

15      A.       Right.

16      Q.       And so that actually begs a question:  
17      Has there been a decision to stop looking for  
18      pentobarbital --

19                  MR. SUTHERLAND: Asked and  
20      answered.

21      BY MS. HENRY:

22      Q.       -- and only to seek --

23                  MS. HENRY: Actually, no, it  
24      hasn't, but your objection is noted.

25      BY MS. HENRY:

1 Q. Has there been a decision to stop  
2 looking for pentobarbital and only look for  
3 midazolam?

4 A. No. Like I've said multiple times,  
5 there's an ongoing effort to find  
6 pentobarbital.

7 Q. And let's go now to Page 19 of that  
8 exhibit --

9 A. Okay.

10 Q. -- which appears to be screenshots of  
11 text messages. Would you agree with me  
12 there?

13 A. Yes, that's what it appears to be,  
14 yes.

15 Q. And those next messages appear from  
16 Bates No. 19 through Bates No. 23, correct?

17 A. Page numbers, you --

18 Q. Yeah.

19 A. -- is that what you're asking? Yes.

20 Q. Yes, those page numbers at the bottom,  
21 we call those Bates numbers. I don't know  
22 why. I don't know what "Bates" means.

23 A. Okay.

24 Q. But we call them Bates numbers. 19  
25 through 23, do you agree with me on that?

1 A. Yes.

2 Q. All right. And on Page 19 at the top,  
3 there appears to be a date, Tuesday,  
4 April 4th, 2017, correct?

5 A. Yes.

6 Q. Midway down the page under Wednesday,  
7 April 5th, 2017, there is a text message that  
8 reads: "I'm running around today so not sure  
9 when I'll be open for a call. But in the  
10 meantime, can you send me a list of all  
11 companies, et cetera, you reached out to  
12 about sourcing so I can have it for when we  
13 have to show it's unavailable? Thanks."

14 Do you see that there?

15 A. I do.

16 Q. Was that list ever created?

17 A. I'm not sure. I don't -- I'm not sure  
18 who -- who wrote this.

19 Q. Okay. Then at the bottom of the page,  
20 it starts with the heading Thursday,  
21 April 6th, 2017, nine-seventeen-16 a.m. [sic],  
22 there's a response that states: "I'm not  
23 ignoring you. I have a cold," et cetera.

24 And then we go to Page 20, and it  
25 starts the text message response to the

1 person with the cold: "10-4. Sorry you're  
2 sick. In my voicemail I had a question about  
3 what type of pento y'all need because I'm  
4 looking into a company and they needed to  
5 know which kind we wanted."

6 Do you see that there?

7 A. I do.

8 Q. And then on down the page, it says in  
9 response to the person who's looking into a  
10 company: "We would need U.S.P. grade."

11 Do you see that?

12 A. I do.

13 Q. Page 21 has a large redaction but is  
14 apparently a picture, based on the text  
15 message under it, which says: "Can you tell  
16 from that pic which of those would work?"

17 Page 22, there's a text message that  
18 starts: "Also those are such small  
19 quantities."

20 Response: "Well, they do bulk options  
21 on things. So once" -- again redacted --  
22 "says which one or what specific type we  
23 need, I'll shoot that to them to see if it's  
24 possible."

25 Do you see that?

1 A. Oh, show me where you -- in.

2 Q. Page 22 (indicating).

3 A. Okay. Okay. Yes, I see it.

4 Q. And then at the bottom there's a  
5 question: "What are your thoughts on  
6 acquiring it through a veterinarian?"

7 Do you see that?

8 A. Yes.

9 Q. Did TDOC consider acquiring  
10 pentobarbital from a veterinarian?

11 A. It's my understanding that TDOC --  
12 again, I instructed them to find -- to use  
13 all available means --

14 Q. Uh-huh.

15 A. -- to find pentobarbital and obtain it  
16 legally in -- inside the United States or  
17 outside the United States. So very well it  
18 could have, yes.

19 Q. They very well could have considered  
20 getting it from a vet?

21 A. Could have.

22 Q. Yes?

23 A. Again, I'm not sure who wrote these,  
24 but....

25 Q. Well, they were provided to us from

1 your lawyers in response --

2 A. Okay.

3 Q. -- to an order to produce documents  
4 that were in the Department of Correction's  
5 custody --

6 A. Okay.

7 Q. -- regarding the acquisition of  
8 pentobarbital.

9 A. Okay.

10 Q. So I'm assuming that this is a  
11 response of text messages from someone within  
12 TDOC, but it's not you, correct?

13 A. Correct.

14 Q. If we look at Page 23, it states,  
15 after substantial redactions: "Let me do  
16 some looking into that possibility and talk  
17 with the bosses," correct?

18 A. Correct.

19 Q. And that ends the text message  
20 exchange.

21 And then we move to Page 24,  
22 February 15th, 2017 the Subject is "Pharmacy  
23 Contact" and basically everything else is  
24 redacted on that page except for the word:  
25 "Hi," "it's" and "THX," correct?

1 A. Right.

2 Q. So we really have no idea what that  
3 page means, correct?

4 A. Correct.

5 Q. The next page starts a series of  
6 e-mails dated April the 4th, 2017. And,  
7 actually, those e-mails appear to be out of  
8 chronological sequence. The first one at the  
9 top of Page 25, April 4th, 2017, 10:41 a.m.,  
10 regarding your inquiry states: "We had an  
11 internal discussion and we have respectfully  
12 declined to quote," correct?

13 A. Correct.

14 Q. And then a response that simply says:  
15 "Thank you," correct?

16 A. Correct.

17 Q. The next page, Page 26 states: "We  
18 have not made this compound in the past. I  
19 will have our technical team evaluate and let  
20 you know if we can develop the synthetic  
21 route and GMP the manufacture process."

22 What is the synthetic route?

23 A. I do not know.

24 Q. What is the GMP manufacture process?

25 A. I am not aware.

1 Q. Does this appear to be an individual  
2 who says that they are willing to attempt to  
3 make pentobarbital?

4 A. I guess that could be an -- that could  
5 be a reasonable assumption. It doesn't say  
6 pentobarbital, but that's -- that was the --  
7 what we were looking for, so I guess that's  
8 an assumption that could be made, yes.

9 Q. And, again, this was provided pursuant  
10 to a Court order to provide documents  
11 relating to the Department's search for  
12 pentobarbital?

13 A. Right.

14 Q. But you don't know who put this  
15 paperwork together? We're presuming they  
16 were complying with the Court order, though,  
17 right?

18 A. Correct.

19 Q. At the bottom of the page at 9:41 a.m.  
20 on April the 4th, 2017, it states: "Here is  
21 the requested info, pentobarbital CAS  
22 No. 76-74-4. Need at least 100 grams. Would  
23 be interested in pricing for bulk orders."

24 Do you see that there?

25 A. I do.

1 Q. And is 100 grams an amount necessary  
2 for ten executions?

3 A. Yes.

4 Q. And then when we go to Page 27, the  
5 e-mail continues: "We have a compounding  
6 pharmacy able to compound the solution. They  
7 just need the pentobarbital. However would  
8 be" interesting -- "interested in pricing the  
9 compound as well through your operation. Let  
10 me know if there's any other information you  
11 need."

12 So on Page 27, it appears that someone  
13 with TDOC is stating that TDOC, as of  
14 April 4th, 2017, has a compounding pharmacy  
15 willing to compound the LIC --

16 A. That's --

17 Q. -- correct?

18 A. That's correct.

19 Q. And then if you'll turn to Page 29 of  
20 your lawyer's production, an e-mail dated  
21 Thursday, April 6th, 2017 at 11:00 a.m. where  
22 it states: "The products we sell are  
23 isotopically" -- i-s-o-t-o-p-i-c-a-l-l-y --  
24 "labeled and used as an internal standard for  
25 analytical purposes. The concentrations

1 noted below are micrograms per milliliters.

2 We are unable to provide the quantity you  
3 need. Thank you for your inquiry."

4 Do you see that?

5 A. I do.

6 Q. So the quantity that was being  
7 requested was for ten executions, correct?

8 A. If this e-mail is relating back to the  
9 previous one, yes. I -- I'm not -- one's  
10 dated April 6th, one's dated April 4, and I'm  
11 not sure -- is it from the same person and to  
12 the same people? I don't know. So, I  
13 mean....

14 Q. Is there a way that we can find out?

15 A. Not that I'm aware of.

16 Q. Would you agree with me that the  
17 previous e-mail on the page before, which  
18 requested 100 or enough for ten executions,  
19 did not request a smaller amount? It only  
20 requested a singular amount?

21 A. Correct.

22 Q. And in April of 2017, was the  
23 Department anticipating the need to set ten  
24 execution dates?

25 A. No.

1 Q. Why was the Department looking for  
2 enough pentobarbital for ten execution dates?

3 A. I would have to ask the person who was  
4 in contact with these pharmacies. To my  
5 knowledge, the Department of Corrections  
6 would be looking for pentobarbital in any  
7 amount that would carry out at least one  
8 execution. I mean, it doesn't -- I -- I  
9 don't have any knowledge of a set limit that  
10 we would only want enough pentobarbital or --  
11 or an amount to do at least ten.

12 It's my understanding that our search  
13 for pentobarbital -- with the exception of  
14 the one case that we talked about where it  
15 appeared we had someone to provide the drugs,  
16 but at the last minute they backed out of  
17 providing the compounded pentobarbital --  
18 there has not been any cases from anyone who  
19 could provide any amount of pentobarbital.

20 Q. And the source of your knowledge on  
21 this, sir, is from talking to the individuals  
22 who worked for you who have been engaged in a  
23 search; is that correct?

24 A. From my conversations with people both  
25 inside the Tennessee Department of

1 Corrections, as well as other officials from  
2 multiple other states and entities, yes.

3 Q. You have not personally had a  
4 conversation with any pharmacist or supplier  
5 of LIC requesting whether they could provide  
6 LIC; is that correct?

7 A. Well, my staff has done that.

8 Q. And so when the Court ordered your  
9 lawyers to provide us with all of the  
10 paperwork about all of the searches that had  
11 been conducted by your staff, we're to rely  
12 on those documents; is that fair to say?

13 A. That's fair to say.

14 Q. And so if the documents show the only  
15 amount requested was enough for ten  
16 executions and the response is: "We don't  
17 have it in that amount," that's what we're  
18 left with, correct?

19 A. Correct.

20 Q. And you might have told people you're  
21 looking for any amount, but as far as what  
22 they've actually searched for, we have to go  
23 with the documents, right?

24 A. Okay. Yes.

25 Q. It is now 2:59. I think it's time for

1 us to take our afternoon break. We've been  
2 at this for four hours and five minutes.

3 MS. HENRY: And we'll go off the  
4 record.

5 (Brief recess observed.)

6 BY MS. HENRY:

7 Q. Okay. It's 3:15 and we're back on  
8 record.

9 Commissioner, I want to continue to go  
10 through the production from your lawyers.

11 The good news is I don't think we're going to  
12 go six hours.

13 A. Okay.

14 Q. Skip through some of this. Beginning  
15 on Page 35 of the production, there appears  
16 to be handwritten notes on the person who is  
17 looking for drugs. Appears -- it appears to  
18 be their handwritten notes; is that correct?

19 Well, do you recognize that?

20 A. I -- it appears to be, yes, someone.  
21 I -- I don't recognize this. I -- I haven't  
22 seen it, but it appears to be, yes.

23 Q. It's not your handwriting?

24 A. No, it's not.

25 Q. On Page 36, again, some handwritten

1 notes. At the top of the page it says: 10  
2 grams per individual -- or I-N-D period?

3 A. Uh-huh.

4 Q. And there's an arrow and the number  
5 "24K," which I interpret as 24,000. Would  
6 you as well?

7 A. Yes.

8 Q. So that appears to be the price being  
9 quoted for pentobarbital, correct?

10 A. Yeah, it appears to be the price of  
11 10 grams -- 10 grams per individual or I-N-D  
12 for, I'm assuming, pentobarbital.

13 Q. And then it says: "Comp fee? 35K per  
14 10G." Do you know what that means?

15 A. I do not.

16 Q. Then it says: "Source?" And then  
17 there's a redaction; is that correct?

18 A. Correct.

19 Q. So we don't know if the redaction is  
20 the identity of a source willing to provide  
21 pentobarbital at a comp fee of 35,000 for, I  
22 guess, getting it and 24,000 for the dose?

23 A. I -- I don't know.

24 Q. And then there is written "A-M-T"  
25 which is a common abbreviation for "amount"?

1 A. Uh-huh.

2 Q. By, at sign, at a time.

3 Then there's a large redaction. The  
4 words "time," "till" and the letters  
5 "A-V-A-I-L" which is a common abbreviation  
6 for "available," correct?

7 A. Correct.

8 Q. And then, again, more redactions and  
9 the words "Once A-C-C-T" -- which I interpret  
10 as "account" -- "approved bulk money option,"  
11 correct?

12 A. Correct.

13 Q. And then there's a substantial portion  
14 of the page that's redacted, correct?

15 A. Yes.

16 Q. Page 37 is all redactions, correct?

17 A. Correct.

18 Q. Page 38 is heavily redacted, correct?

19 A. Correct.

20 Q. It has at the top the letters "D-E-A"  
21 and then the letter "code." Those are  
22 commonly associated with individuals who have  
23 a license to sell Schedule II drugs such as  
24 pentobarbital, correct?

25 A. Correct.

1 Q. You have to have a DEA code?

2 A. (Witness moves head up and down.)

3 Q. Correct?

4 A. Correct.

5 Q. And then under the heavy redactions  
6 are the words "they sell us the compound,"  
7 correct?

8 A. Correct.

9 Q. Then there's the word "no" after a lot  
10 of redactions. Then there are more  
11 redactions. The word "pentobarbital" appears  
12 twice on the page. The -- at the very bottom  
13 of the page, there is a blank -- a redacted  
14 space, an arrow and the word "supplier."

15 Do you see that there?

16 A. I do.

17 Q. And above it is the number "100" with  
18 an "S" and the letters "CO." Do you know  
19 what that refers to?

20 A. I do not.

21 Q. Below that is an arrow that says  
22 "pentobarbitone."

23 Do you see that?

24 A. I do.

25 Q. Is pentobarbitone the same as

1 pentobarbital?

2 A. I'm not sure.

3 Q. On Page 39, again a heavily redacted  
4 page. You would agree?

5 A. Yes.

6 Q. There appears to be handwritten "pharm  
7 call" and, then there's redactions, and then  
8 "3/1 ship" and then under -- on the next line  
9 it says "Source it in"?

10 A. Correct.

11 Q. And then there are heavy redactions  
12 and then it says "Not licensed to," a  
13 redaction, and then "I-N-S-T," which I'm  
14 assuming is "institutional" -- "agreement,"  
15 correct?

16 A. Correct.

17 Q. Then there's more redactions and then  
18 it says: "Compound, two weeks to and  
19 confirm," correct?

20 A. Correct.

21 Q. The bottom of the page, it says:  
22 "Three wholesalers," correct?

23 A. Correct.

24 Q. Page 40 is completely redacted,  
25 correct?

1 A. Correct.

2 Q. Page 41 appears to be a printout of  
3 the chemical properties of pentobarbitone,  
4 correct?

5 A. Correct.

6 Q. And Page 42 appears to be the second  
7 page of that printout, correct?

8 A. Correct.

9 Q. Do you recognize that printout?

10 A. I do not.

11 Q. On Page 43 is a document that is again  
12 heavily redacted, but at the top has the word  
13 -- I don't know what that word is --  
14 pentasol. P-e-n-t-a-s-o-l, do you see that  
15 there?

16 A. I see that. I'm not sure.

17 Q. Underneath it, it says: Sodium pento  
18 powder.

19 Do you see that?

20 A. Yes.

21 Q. Do you know what that references?

22 A. I do not.

23 Q. The next word across the top of the  
24 page says: "Parallel protocol," correct?

25 A. Yes.

1 Q. Do you know what that means?

2 A. I do not.

3 Q. And then it says -- there's a star and  
4 it says: "Need barbiturate."

5 Do you know what that --

6 A. I see that.

7 Q. Is pentobarbital a barbiturate?

8 A. I'm not sure.

9 Q. Do you know what the star "need  
10 barbiturate" means?

11 A. No, I don't.

12 Q. Page 44 is completely blacked out,  
13 correct?

14 A. Correct.

15 Q. Page 45 has a redaction and the words  
16 "no per pharm," correct?

17 A. Correct.

18 Q. And then a redaction.

19 Do you know what the "no per pharm"  
20 means?

21 A. I do not.

22 Q. Underneath that, "Missouri lit on  
23 disclose- -- I'm assume disclosure -- "of  
24 source. Court upheld confidentiality of  
25 source."

1                   Do you see that?

2   A.        I do.

3   Q.        Does that appear to be just legal  
4   research?

5   A.        It appears to be, yes.

6   Q.        Page 46, does this appear to be more  
7   legal research?

8   A.        It does.

9   Q.        Page 47, do you see where at the top  
10   of Page 47, it says: "Plenty in Europe and  
11   availability according" -- and then there's a  
12   redaction and the words "has it"?

13   A.        I see that.

14   Q.        And then it says "no lawyers."

15   A.        I see that.

16   Q.        So there appears to be a notation that  
17   there's plenty of pentobarbital available in  
18   Europe. Is that what that notation means?

19   A.        Well, based on what we've been talking  
20   about, it -- it could mean that. I'm --  
21   again, I would have to ask the person who  
22   wrote it.

23   Q.        And then there's more handwriting  
24   which appears to be questions the writer is  
25   either asking of somebody or asking of

1 himself or herself?

2 A. Uh-huh.

3 Q. Is that correct?

4 A. Correct.

5 Q. Commissioner Parker, we've been  
6 through every single page of Deposition  
7 Exhibit U, which are the only documents that  
8 have been provided to us in response to the  
9 Court order regarding the production of  
10 documents. Are you aware of any other  
11 documentation in the Department of  
12 Correction's possession, custody or control  
13 that would be responsive to the Court's  
14 order, that are not included in this packet?

15 A. No. I would not.

16 Q. You've mentioned several times today  
17 that there was a pharmacist who was willing  
18 to provide pentobarbital but then backed out  
19 at the last -- at the 11th hour, I believe  
20 was your words; is that correct?

21 A. Correct.

22 Q. Where is the documentation of the  
23 pharmacist who was willing to provide  
24 pentobarbital?

25 A. It's my underst- -- what I was -- my

1 information, I was briefed on that by the  
2 official who has been searching for the drug  
3 for the Department. And he reported to me  
4 verbally that -- kept me up-to-date that we  
5 thought we had a source. There appeared to  
6 be a source. The pharmacist was willing to  
7 work and find, as I remember -- recall, the  
8 raw ingredients to compound pentobarbital,  
9 found the raw ingredients, but I was -- it  
10 was my understanding they had -- the  
11 pharmacist did not have them. He had to  
12 purchase them from someone else. And we felt  
13 like at the time that that was not going to  
14 be an issue. It seemed like that that was  
15 going to work out, that we would have  
16 pentobarbital as a source.

17 And if I recall correctly, the day,  
18 basically, that the supplier was supposed to  
19 send the ingredients to the pharmacist to be  
20 -- the compounding pharmacy, they sent a  
21 notification to the pharmacist that these  
22 chemicals or these ingredients could not be  
23 used to, in my own words, compound  
24 pentobarbital that would be used in a  
25 correctional setting or -- or something in

1 that manner.

2 Q. And where is that notification?

3 A. He told me that verbally.

4 Q. But if there was a notification sent,  
5 where is it?

6 A. I'm assuming he talked to the  
7 pharmacist. I don't know. I'm assuming that  
8 that would be with the people that this  
9 individual talked to.

10 Q. Well, we've been through Deposition  
11 Exhibit U, and there's nothing in Deposition  
12 Exhibit U about a pharmacist pulling out at  
13 the 11th hour. And we've agreed that this is  
14 pretty important to the Department of  
15 Correction and to the citizens of the state  
16 of Tennessee and to the Plaintiffs?

17 A. Uh-huh.

18 Q. And so one would expect there to be  
19 documentation. So I'm asking where is the  
20 documentation of the pharmacist who pulled  
21 out at the 11th hour or the supplier who  
22 pulled out at the 11th hour?

23 A. I don't know. Again, I -- I don't  
24 know that some of that information may have  
25 been in the redacted information that you

1 have. I don't know. Again, I have never  
2 seen a piece of paper or a documentation with  
3 that language on it that "We decline" or that  
4 -- or the actual notice they sent to the  
5 pharmacist. I haven't seen that. I don't  
6 know that it exists.

7 What I was told by my staff, that that  
8 was the -- the case and what happened in that  
9 situation.

10 Q. So the basis of your knowledge is a  
11 verbal conversation with a member of your  
12 staff about what someone else told him or  
13 her?

14 A. His report back to me in regards to  
15 his search for pentobarbital was a verbal  
16 conversation between me and him that that is  
17 the case of -- of what happened in his  
18 discussion with the pharmacist.

19 Q. So it was his verbal report. Is there  
20 a written report --

21 A. No.

22 Q. -- from him to you?

23 A. No.

24 Q. Why not?

25 A. Didn't need one. He --

1 Q. Why?

2 A. -- come and talked to me about it. I  
3 mean, we talk daily about the search for  
4 pentobarbital and the issue of finding  
5 chemicals for lethal injection.

6 Q. You testified earlier today that you  
7 have a poor memory. And would you agree with  
8 me that one way to remember important  
9 details, if you have a poor memory, is to  
10 write them down?

11 A. Yeah, I guess you could say that.

12 That's true.

13 Q. But you chose not to write down the  
14 content of those conversations?

15 A. Correct.

16 Q. And why is that?

17 A. Didn't see a need to.

18 Q. Have you been told not to write things  
19 down about the attempts to acquire  
20 pentobarbital?

21 A. No.

22 Q. Is there a person within TDOC who has  
23 actual personal knowledge of the search for  
24 pentobarbital?

25 A. There's individuals in TDOC who I have

1 assigned the responsibility to actively  
2 search for not only pentobarbital but any of  
3 the drugs necessary for the execution  
4 protocol --

5 Q. Would it --

6 A. -- lethal injection protocol.

7 Q. Given that you don't have personal  
8 knowledge or cannot authenticate any of the  
9 documents that your counsel produced in  
10 response to the Court's order, is TDOC  
11 willing to make that person available for an  
12 anonymous deposition?

13 MR. SUTHERLAND: Objection, Your  
14 Honor [sic]. Objection. Kelley, the Court's  
15 order says we're not getting into identities.

16 MS. HENRY: I didn't ask for the  
17 identity. I asked him for his identity. I  
18 asked if he would be willing to make him  
19 available for an anonymous deposition.

20 MR. SUTHERLAND: But the West  
21 decision says that we don't do that.

22 MS. HENRY: I understand. I asked  
23 is the Department willing. He can say "yes"  
24 or "no," and then we'll take it up with the  
25 Court.

1 MR. SUTHERLAND: Sure.

2 THE WITNESS: I -- with an order  
3 of the Court, I would do that.

4 BY MS. HENRY:

5 Q. Okay. Thank you.

6 I'm going to move now to a different  
7 area, but before I do, I've been trying to  
8 stay within the bounds of the Court's order.

9 And in so doing I may have not worded my  
10 questions correctly in order to gather  
11 information that you may or may not have.

12 And so forgive my catchall question, but I  
13 can't form a question about information I  
14 don't have. We've covered everything that's  
15 been produced so far by the Department of  
16 Correction, both through Public Records  
17 Request and Court-ordered productions. Are  
18 you aware of any other information about the  
19 Department's attempts to gather  
20 pentobarbital, other than what we have  
21 discussed here today?

22 A. No, I'm not.

23 Q. And I do need to back up, I'm sorry.  
24 I didn't -- I neglected to ask you: This  
25 conversation that you had with a member of

1      TDOC staff regarding the supplier backing out  
2      at the 11th hour, when did that occur?

3                    MR. SUTHERLAND: Are you asking  
4      when the conversation happened?

5      BY MS. HENRY:

6      Q.        When did the conversation occur?

7      A.        Oh, it occurred months and months ago.  
8      Probably -- I don't know a long -- a pretty  
9      good while ago. I would say probably a year,  
10     maybe, or several months ago. And it  
11     occurred -- I was made aware of it very soon  
12     after he was made aware that they would not  
13     be able to obtain the -- the ingredients to  
14     compound the source.

15     Q.        All right. And so would you agree  
16     with me that if it was several months ago,  
17     maybe even a year ago, fair to say that that  
18     conversation between you and your TDOC staff  
19     member occurred prior to the Department  
20     making a determination to add the three-drug  
21     protocol using midazolam?

22     A.        Yes, I would think that would be a  
23     safe assumption or a safe thing to say, that  
24     it -- it occurred prior to the decision to go  
25     to a three-drug protocol.

1 Q. When was the decision to add the  
2 three-drug protocol to the Lethal Injection  
3 Manual made?

4 A. I don't remember the exact -- the  
5 exact date. I had discussions with TDOC  
6 staff, and the -- regarding the availability  
7 of pentobarbital, midazolam and -- and the  
8 vecuronium and the potassium chloride for a  
9 three-drug protocol, and the decision was  
10 made to go -- to add the three-drug protocol  
11 as Option B. But I don't remember the exact  
12 date of when that decision was made. But it  
13 was made, and the protocol was drafted and  
14 signed by me.

15 Q. Was the -- well, the protocol was  
16 adopted on January 8th, 2018.

17 A. Right.

18 Q. Can you estimate how close to  
19 January 8th, 2018 the decision was made?

20 A. I would say several weeks. Maybe a  
21 month or two before. I -- again, that's just  
22 speculation on my part.

23 Q. So somewhere at the outset, about two  
24 months?

25 A. I'd say two -- yeah, possibly.

1 Q. Okay.

2 A. It wasn't a year before.

3 Q. Okay.

4 A. But it was within that time frame.

5 Q. Okay. The protocol that has been  
6 provided to us contains Protocol A and  
7 Protocol B. Where within -- let me ask it  
8 this way: Is there a provision in the  
9 written protocol that guides the discretion  
10 of the Warden as to whether to choose  
11 Protocol A or Protocol B?

12 A. No, there is not.

13 Q. Who makes the decision about whether  
14 to utilize Protocol A or Protocol B?

15 A. I do, the Commissioner.

16 Q. And where is that written down?

17 A. I'd have to look in -- in the  
18 protocol.

19 Q. Sure. Go ahead.

20 A. (Witness reviews document.)

21 Q. And I see that your counsel has  
22 helpfully guided you to a page of the  
23 protocol. What page is that?

24 A. Page 34.

25 Q. All right. And what does Page 34 tell

1 us?

2 A. It's entitled "Chemicals Used in  
3 Lethal Injection."

4 "The Department will use one of the  
5 following protocols as determined by the  
6 Commissioner. Protocol A and Protocol B."

7 Q. All right. What will guide your  
8 determination?

9 A. Determination as to which protocol is  
10 used?

11 Q. Correct.

12 A. Again, the availability of the drugs  
13 currently. We're talking about Protocol B  
14 because we have basically exhausted efforts  
15 with trying to find pentobarbital. We  
16 continue to search for pentobarbital, but I  
17 have no reasonable expectation that we'll  
18 find it, and the current process is set for  
19 Protocol B to be the -- the method that's  
20 used.

21 Q. So I'm going to go back to that, but  
22 let me ask you this question.

23 A. Okay.

24 Q. You said that we've exhausted but we  
25 continue to look. That seems contradictory

1 to me.

2 A. Well, it is contradictory, and it's  
3 probably a bad choice of words. Once you get  
4 to a point where you have contacted hundreds  
5 of suppliers, then you get to the point of  
6 repeating yourself and calling people you've  
7 already contacted and looking for new sources  
8 or potential new sources. But we're at that  
9 point to where we're running out of options  
10 as far as finding legal sources for  
11 pentobarbital.

12 But I'm not as Commissioner saying we  
13 stop the search for pentobarbital. It's  
14 still part of the protocol. It's still an  
15 option and we certainly would not want to  
16 just wash our hands of that option.

17 Q. If you had in your possession lethal  
18 injection chemicals for Protocol A and  
19 Protocol B at the same time, how would you  
20 choose between whether to use Protocol A or  
21 Protocol B?

22 A. I would choose Protocol A.

23 Q. Why?

24 A. Well, it's -- one, it's a -- it's a  
25 one-drug protocol. And, also, you know,

1 there's been litigation on it. I think it's  
2 been -- the Courts have said that it's  
3 Constitutional or whatever. But my primary  
4 would be pentobarbital if it's available.  
5 But it's not available.

6 Q. And you said your preference would  
7 include because it's a one-drug protocol.  
8 What about a one-drug protocol makes it  
9 preferable?

10 A. Well, for me personally as  
11 Commissioner in my official capacity, to me a  
12 one-drug protocol is probably simpler.  
13 You're only pushing one drug. You're not  
14 pushing three. It only requires one saline  
15 flush. And from my conversations, you know,  
16 with individuals, I have -- just rather have  
17 a -- I'd rather have the pentobarbital versus  
18 the three-drug protocol.

19 Q. And what does that mean by  
20 conversations with individuals "I'd rather  
21 have the pentobarbital"?

22 A. Well, I've talked to -- I've talked to  
23 people who have information regarding the  
24 process with pentobarbital as a one-drug  
25 protocol versus a three-drug protocol, and

1 it's just my personal opinion and  
2 professional opinion that I'd rather have a  
3 one-drug protocol.

4 Q. And not to belabor the point, sir, but  
5 is that because the risk of pain and  
6 suffering is less with the one-drug protocol  
7 than a three-drug protocol?

8 A. Well, I don't know that I -- I don't  
9 know that I'm qualified to say. I would say  
10 that it makes the process less complicated as  
11 far as the number of drugs, the number of  
12 syringes that have to be prepared, and the  
13 fact that it seems like that pentobarbital  
14 would be an easier and certainly as effective  
15 method as the three-drug protocol.

16 Q. Under the protocol, 30 days prior to  
17 an execution date, an inmate is provided with  
18 a choice. An inmate sentenced to death prior  
19 to lethal injection being the default method  
20 of execution in Tennessee, would be the  
21 majority of our Plaintiffs. They are  
22 provided with a choice between lethal  
23 injection or electrocution. Does the  
24 protocol provide for advising those inmates  
25 which protocol will be utilized if they

1 choose lethal injection?

2 A. No, the protocol -- the protocol gives

3 an option of lethal injection or

4 electrocution. And I -- for -- those inmates

5 sentenced before January 1st of '99 have the

6 option. Those after -- of course, I mean,

7 you know that. It's -- after that, it's

8 lethal injection is the primary method.

9 Q. So is it fair to say, then, sir, that

10 it will be up to the Commissioner? You, up

11 until the time of execution, you could change

12 whether it's Protocol A or Protocol B under

13 the Lethal Injection Manual?

14 A. Well, I guess you could -- it's fair

15 to say that the option might be available,

16 but I would -- just let me clarify to say

17 that it's going to be based on the

18 availability of the drug. And, again, I have

19 no reason to believe at this point that

20 there's a source of pentobarbital that I can

21 acquire for an execution that's coming forth

22 in Tennessee. And the three-drug protocol,

23 we do have a source, and I do feel confident

24 that we'll have the drug and that that will

25 be the method that will be used going forth

1 as far as lethal injection.

2 Q. Has the Department of Correction been  
3 served with a letter from the manufacturer of  
4 midazolam asking that the midazolam be  
5 returned?

6 A. Yes.

7 Q. And what was -- who received that  
8 letter?

9 A. I'm assuming my Legal team received  
10 the letter, although it could have been  
11 addressed to me as Commissioner. I'm going  
12 to make the assumption that that was routed  
13 to the Legal team of the Department.

14 Q. What action was taken upon the receipt  
15 of that letter?

16 A. We did not return the chemicals.

17 Q. And why not?

18 A. Because in my opinion we purchased  
19 them legally, and we did not want to return  
20 them.

21 Q. When did you receive that letter?

22 A. Months ago. I don't remember the  
23 exact month, but it was months ago.

24 Q. What was the contents of the letter?

25 A. I didn't read the entire letter.

1 Again, my Legal team briefed me on what the  
2 request was, and asked for a decision  
3 regarding are we going to return the  
4 chemicals or not.

5 Q. Having received a letter from the  
6 manufacturer of the midazolam asking for the  
7 return of their manufactured product, the  
8 Department has made the decision to go  
9 forward and purchase midazolam, knowing that  
10 the manufacturer doesn't want it used?

11 MR. SUTHERLAND: Asked and  
12 answered.

13 MS. HENRY: No, this is actually  
14 moving forward to buy it again.

15 BY MS. HENRY:

16 Q. It's not your -- you have some -- you  
17 don't have any in your possession right now  
18 that's not expired, right?

19 A. Right.

20 Q. And so you've received a letter from  
21 the manufacturer telling you they don't want  
22 it used in the execution, and now the  
23 Department is going to willfully ignore that  
24 letter?

25 A. My intent is to purchase midazolam for

1 future executions in Tennessee.

2 Q. And do you believe that purchasing  
3 midazolam in violation of distribution  
4 agreements is legal?

5 A. That would be a question I would have  
6 to ask attorneys. I'm assuming it's not  
7 illegal, because it's -- I felt like if it  
8 was illegal, I would not do it.

9 Q. I'm going to move now to that portion  
10 of the Court's order respecting our  
11 deposition regarding the --

12 MR. KISSINGER: Go ahead.

13 BY MS. HENRY:

14 Q. -- on Page 20, the Deponent's  
15 knowledge, if any, of the logistics of  
16 administering and implementing how Protocol B  
17 is followed, administered and implemented as  
18 written, okay?

19 A. Okay.

20 Q. When Protocol B is administered, it is  
21 administered using a number of syringes, as  
22 you've stated, correct?

23 A. Correct.

24 Q. And there are a total of nine  
25 syringes; is that correct?

1 A. That's correct.

2 Q. How much time elapses between the  
3 injection of the first syringe and the second  
4 syringe?

5 A. I'm not sure there's a specific time,  
6 so I wouldn't know.

7 Q. What is the training for how quickly  
8 the syringe is supposed to be injected?

9 A. It's -- it's my understanding that  
10 it's -- and I have never heard of a specific  
11 time as far as minutes or seconds in regards  
12 to the administering of the chemicals. It's  
13 my understanding that it's a slow, steady  
14 push of the -- of the chemical, observing the  
15 IV site and the flow of the chemical in  
16 through the catheter.

17 Q. And the observing of the IV site is  
18 performed by the Executioner using the pan  
19 tilt to zoom the camera in?

20 A. Yes.

21 Q. And so there's a camera that is  
22 positioned over the injection site that will  
23 project video into the execution -- the  
24 Executioner's room?

25 A. Correct.

1 Q. And I'm going to get back to that in a  
2 minute. But as the Executioner injects the  
3 first syringe, which is midazolam, how much  
4 time does he wait between the first push of  
5 midazolam and the second push of midazolam?

6 A. As the protocol is written, there's  
7 not a specific time. When he finishes one  
8 syringe, he gets the other syringe, prepares  
9 it to be pushed and then pushes the second  
10 syringe of midazolam.

11 Q. So is it done basically one right  
12 after the other?

13 A. Correct, as I understand it, yes.

14 Q. Have you personally observed the  
15 Warden practice the consciousness check  
16 that's in the lethal injection protocol?

17 A. I have personally witnessed him  
18 perform the conscious check during a  
19 training.

20 Q. Okay. One of the band practices?

21 A. Yes.

22 Q. He testified yesterday that the  
23 consciousness check takes him about 10 to 12  
24 seconds. Would you agree with that estimate?

25 A. I'm not sure. It would probably take

1 -- I -- I'm assuming a matter of seconds. I  
2 don't think it would take three or four  
3 minutes, but, yeah.

4 Q. And the consciousness check does not  
5 involve pinching or twisting of the skin; is  
6 that correct?

7 A. No.

8 Q. Is the -- during these training  
9 sessions, these band practices, is there a  
10 person fill- -- fulfilling the role of Lethal  
11 Injection Recorder?

12 A. I'm not sure that in all practice  
13 sessions that there are -- that there is a  
14 person in place to record. I'm not sure  
15 about that.

16 Q. If there are recording sheets  
17 produced, would it be fair to assume that the  
18 person who wrote the times in is the person  
19 who is assigned to --

20 A. Yes.

21 Q. -- be the Lethal Injection Recorder?

22 A. It would be, yes.

23 Q. Okay. During the practice sessions,  
24 does the Execution Team practice the lethal  
25 injection Protocol B exactly as it is written

1 in the protocol?

2 A. Yes, to the best of my knowledge, yes.

3 Q. And so they actually inject -- there  
4 are actually nine injections?

5 A. Correct.

6 Q. Would it be fair for us to assume,  
7 then, that the times that are listed by the  
8 Lethal Injection Recorder are an accurate  
9 reflection of how long it takes the  
10 Executioner to insert -- to push nine  
11 syringes?

12 A. Yes. Again, assuming they pushed all  
13 nine syringes, yes, it would be.

14 Q. And that would include the time needed  
15 for the consciousness check?

16 A. Yes.

17 Q. And would that be the best evidence of  
18 -- well, talking to the Executioner would be  
19 the best evidence. But absent talking to the  
20 Executioner, would those recordings made by  
21 the Lethal Injection Recorder, of the times  
22 in which the syringes are pushed, would that  
23 be the best evidence of the time that elapses  
24 between the pushing of the chemical?

25 A. So, yeah, absent talking to somebody

1       that's directly involved, just for an  
2       example, the -- during the last full-scale  
3       process that we had, knowing -- I don't know  
4       that they pushed all of the -- the syringes  
5       in that case because obviously you've got an  
6       individual there that's a member of the team  
7       that has the IVs hooked up and you're pushing  
8       that much saline, so....

9                  But absent anybody's personal  
10       knowledge of being there and witnessing it,  
11       yes, that would be the -- the most accurate  
12       reflection that's available.

13      Q.       And if there is a time listed next to  
14       each individual syringe as though it had been  
15       pushed at that particular time, can we  
16       presume that there was actually a push of the  
17       syringe?

18      A.       I think that's a safe assumption, yes.

19      Q.       The Lethal Injection Recorder wouldn't  
20       just be making up times?

21      A.       No, I would hope not.

22      Q.       And just to close down the record on  
23       this -- and I only have one full copy, but  
24       Mr. Sutherland saw this yesterday.

25                  MS. HENRY: I'm going to ask the

1 court reporter to mark this Deposition

2 Exhibit V.

3 BY MS. HENRY:

4 Q. And after she marks it, I'm going to  
5 hand it to you to look at.

6 A. Okay.

7 (Exhibit V was marked.)

8 BY MS. HENRY:

9 Q. And is there a cover letter on  
10 Deposition Exhibit V?

11 A. It is.

12 Q. And is that cover letter signed by  
13 Debra Inglis?

14 A. It is.

15 Q. And who is it addressed to?

16 A. Kelley Henry.

17 Q. Okay. And --

18 A. And Janet Santana.

19 Q. And does that appear to be a cover  
20 letter regarding attached -- the attachment  
21 of documents pursuant to a Tennessee Public  
22 Records Request?

23 A. It does.

24 Q. And what is the date of that letter?

25 A. April the 2nd, 2018.

1 Q. All right. If you could turn to what  
2 is marked Page 33 of that production.

3 MS. HENRY: And, Scott, I do have  
4 the relevant portions (tendering).

5 MR. SUTHERLAND: Thank you.

6 THE WITNESS: Okay.

7 BY MS. HENRY:

8 Q. And do you see there where it says at  
9 the top "Protocol B Lethal Injection Chemical  
10 Administration Record"?

11 A. Uh-huh, I do.

12 Q. And it has inmate name John Doe, Date,  
13 2/20/18, correct?

14 A. I do, correct.

15 Q. Does that appear to be the Lethal  
16 Injection Chemical Administration Record that  
17 would be used in the case of a three-drug  
18 execution protocol?

19 A. Yes, it does.

20 Q. And does that document have times  
21 entered next to each syringe?

22 A. It does.

23 Q. And does it appear that all nine  
24 syringes were pushed?

25 A. It appears so, yes.

1 Q. And does it appear that the pushing of  
2 the syringes began at 1920 hours?

3 A. Correct.

4 Q. And ended at 1929?

5 A. Correct.

6 Q. And so does it also appear that three  
7 minutes elapsed between the pushing of  
8 Syringe 1 and Syringe 4?

9 A. Correct.

10 Q. Thank you.

11 That's all we need with that one.

12 Now, with respect to Protocol B and  
13 the pushing of the lethal injection drugs, do  
14 you have any knowledge of how long it takes  
15 midazolam to reach its peak effect?

16 A. No, I don't.

17 Q. Do you know whether the Department of  
18 Corrections has access to an EEG machine?

19 A. I do not.

20 Q. Is it likely that DeBerry Special  
21 Needs facility has an EEG machine?

22 MR. SUTHERLAND: Asked and  
23 answered.

24 THE WITNESS: I don't know.

25 BY MS. HENRY:

1 Q. And do you know what equipment is  
2 available in the Riverbend Maximum Security  
3 Institution infirmary?

4 A. I don't know what all equipment is  
5 there. I know some equipment, but I do not  
6 know all the equipment that's available.

7 Q. There is an infirmary at Riverbend,  
8 correct?

9 A. Yes.

10 Q. And individuals can go there if  
11 there's an acute health crisis?

12 A. Yes.

13 Q. And then if the crisis is something  
14 that the infirmary can't take care of,  
15 they'll go over to Special Needs or an  
16 outside hospital, depending on the need,  
17 correct?

18 A. Depending on the order of the  
19 physician, yes, or the midlevel.

20 Q. If Special Needs can take care of it,  
21 you prefer the inmate to go to Special  
22 Needs --

23 A. Yes.

24 Q. -- for security purposes?

25 A. Yes.

1 Q. And Special Needs is a full-scale  
2 hospital?

3 A. Yes.

4 Q. And does treat individuals who have  
5 heart problems?

6 A. Correct.

7 Q. Why does the protocol not have an EEG  
8 machine available in the execution chamber?

9 A. I don't know.

10 Q. Are you familiar with the phrase  
11 "BIS"?

12 A. No, I'm not.

13 Q. Was there -- is there any provision in  
14 the Tennessee lethal injection protocol that  
15 permits the monitoring of an individual's --  
16 of the inmate's brain activity?

17 A. No, there's not.

18 Q. Why not?

19 A. I don't know.

20 Q. If the Court ordered the Department of  
21 Correction to establish a machine for  
22 monitoring the brainwaves of an executed  
23 inmate, would you be willing to do so?

24 A. With a -- with a final Court order  
25 from an Appellate Court that ordered that,

1 yes, absolutely.

2 Q. And I guess what I'm getting at is  
3 would that violate the safety or the security  
4 of the institution, to have a machine there  
5 monitoring brainwaves?

6 A. Not that I'm aware of.

7 Q. And is that something that would be  
8 beyond the financial cost abilities of the  
9 Department of Correction --

10 A. I'm not familiar with what the cost is  
11 for one of those, but I would assume probably  
12 not.

13 Q. Okay. I'm going to ask the same  
14 question with respect to an EKG, something  
15 that monitors the heart.

16 A. Same -- same answers. I -- again, if  
17 it was ordered, Court-ordered, yes. And the  
18 cost, I wouldn't think would be prohibited --  
19 it wouldn't be cost-prohibited.

20 Q. Okay. And is the reason that it -- we  
21 don't have an EEG or an EKG because it just  
22 wasn't considered?

23 A. I don't know that it was considered,  
24 but there never has been one. That doesn't  
25 necessarily mean one thing or the other,

1 other than we have a physician there to  
2 determine death, to pronounce death. But as  
3 far as why there's not one or hasn't been  
4 one, again, I don't know.

5 Q. According to the protocol, once IV  
6 access has been obtained, isn't it true that  
7 the physician waits outside the execution  
8 chamber?

9 A. Correct.

10 Q. And he's not called back into the  
11 execution chamber, according to the protocol,  
12 until after all nine syringes have been  
13 administered; is that correct?

14 A. Correct.

15 Q. The physician does not stay in the  
16 room to monitor whether or not the inmate has  
17 reached a plane of general anesthesia,  
18 correct?

19 A. Correct.

20 Q. And he's not in the room, nor does he  
21 have visual observation of the inmate to  
22 determine whether the inmate has awokened,  
23 correct?

24 A. Correct.

25 Q. I'm going to ask a question directly

1 from the Court's order so that I'm super  
2 specific, okay?

3 A. Okay.

4 MR. SUTHERLAND: Where are we?

5 MS. HENRY: Page 20.

6 BY MS. HENRY:

7 Q. Is there a person -- and do not reveal  
8 the identity -- who is designated to  
9 determine whether Plaintiffs are aware and  
10 experiencing unnecessary severe pain and  
11 suffering from the vecuronium bromide and  
12 potassium chloride during their execution?

13 A. The Warden that does the conscious  
14 check prior to the vecuronium and the  
15 potassium being administered.

16 Q. So is the Warden the only person who's  
17 designated to fulfill this role?

18 A. Yes.

19 Q. And does he fulfill this role by  
20 performing the consciousness check?

21 A. Yes.

22 Q. Does he fulfill this role in any other  
23 way other than the consciousness check?

24 A. Well, he performs the consciousness  
25 check, but obviously if there was -- I don't

1 want to make assumptions, but if -- if the  
2 consciousness check were to pass and the  
3 inmate/offender was determined to be  
4 unconscious and then something happened that  
5 would cause him to think that that's -- has  
6 changed, something has changed, he would  
7 certainly still have the option of going to  
8 the other set of chemicals. But that's, you  
9 know -- I hope I answered your question.

10 Q. Sure. I think you did.

11 What training does the Warden receive  
12 for determining whether something has gone  
13 wrong that would cause him to switch to the  
14 other set of chemicals?

15 A. Just the training that he receives  
16 there as his -- in his role as Warden to  
17 check for a response from the offender during  
18 the consciousness check, the three checks  
19 that he does.

20 Q. So it's really just the consciousness  
21 check?

22 A. Correct.

23 Q. And if the consciousness check doesn't  
24 actually confirm that the inmate is insensate  
25 to pain, then the Warden doesn't have any

1 other check to fall back on; is that correct?

2 A. Let me make sure I understand your  
3 question. If the Warden determines that the  
4 inmate is not -- is still conscious or not  
5 insensate -- what was -- how did you  
6 pronounce that?

7 Q. Insensate.

8 A. Insensate to pain, the option he has  
9 is to move to the secondary set of chemicals  
10 and start the process over.

11 Q. Is it your understanding that once an  
12 inmate passes the consciousness check with  
13 the Warden, that the inmate cannot reawaken?

14 A. It's my understanding that once he  
15 passes the consciousness check, that we  
16 proceed with the second chemicals, and that  
17 the process continues on. I -- I don't know  
18 if I've answered your question.

19 Q. And the second set of chemicals is the  
20 vecuronium, the paralytic, correct?

21 A. Correct.

22 Q. Which paralyzes the inmate?

23 A. Correct.

24 Q. And so if the vecuronium causes the  
25 inmate to wake up from the sedation, there

1 would be no way for the Warden to observe  
2 that fact, correct?

3 A. I --

4 Q. According to the protocol?

5 A. That's probably -- well, you know,  
6 again, if the inmate's laying there and he --  
7 his eyes pops [sic] open and it's obvious  
8 that he's -- he's become conscious, that  
9 would be a clear sign.

10 I -- but, again, I feel kind of --  
11 it's a medical question that probably a  
12 medical professional probably should answer.  
13 But from my laymen's terms, I mean,  
14 there's -- there's indications that if the  
15 offender was to become conscious again after  
16 passing a consciousness check, that the  
17 Warden would know that and could move onto  
18 the secondary set of chemicals.

19 Q. There's a lot in there. And I agree  
20 with you that a medical professional is  
21 required, but there's no medical professional  
22 in that room.

23 A. That's correct.

24 Q. So the person who is responsible is  
25 the Warden, correct?

1 A. Correct.

2 Q. And he has no medical training,  
3 correct?

4 A. Correct.

5 Q. And the vecuronium paralyzes the  
6 muscles, correct?

7 A. Correct.

8 Q. So the Warden, without medical  
9 training and without a monitor, would be  
10 unable to recognize that the inmate has  
11 reawakened, correct?

12 A. Correct.

13 Q. Are there any contingency plans other  
14 than pushing the second set of chemicals in  
15 the event the Plaintiffs are aware and  
16 experiencing unnecessary and severe pain from  
17 the vecuronium bromide and the potassium  
18 chloride during their executions?

19 A. No, not in the protocol.

20 Q. Are there any other contingency plans  
21 that aren't in the protocol?

22 A. Other than -- not that I'm aware of,  
23 no.

24 Q. And I believe you've testified that if  
25 the inmate was not unconscious, "unconscious"

1 being your word, not the Plaintiffs' word.

2 You understand we --

3 A. I understand.

4 Q. -- think there's a difference between  
5 unconsciousness and insensate?

6 A. Okay.

7 Q. But using the protocol's terms of  
8 "unconscious" and if it's determined that  
9 they are not unconscious after the second  
10 administration of midazolam, then you've  
11 testified you would call off the execution at  
12 that point?

13 A. Yeah. The Warden -- yes, the Warden  
14 would contact me, and I would delay the  
15 execution, call off the execution.

16 Q. What if you had additional drugs  
17 available to you in the armory, would you  
18 continue the execution later that night?

19 A. No.

20 Q. Are there drugs available to the  
21 physician who's waiting in the sally port  
22 area to ameliorate the effects of the drugs  
23 that have been given to the inmate from the  
24 -- in the administration of the first and  
25 second drugs of midazolam, should the

1 midazolam not work?

2 A. No.

3 Q. Are you aware of the harmful and toxic  
4 effects of midazolam itself when given in a  
5 bolus dosage -- can cause to an inmate?

6 A. No.

7 Q. Have you asked anyone about the impact  
8 on the human body of giving a bolus dose of  
9 midazolam?

10 A. No.

11 And what do you mean by "bolus dose,"  
12 I'm sorry.

13 Q. The massive quantity of midazolam  
14 that's being injected.

15 A. I see.

16 Q. That's -- they refer to that as a  
17 bolus dose.

18 A. Okay.

19 Q. That's a large amount.

20 A. Okay.

21 Q. Have you asked anybody about what  
22 effect that's going to have on the human  
23 body, separate and apart from the other two  
24 drugs?

25 A. Other than the effect of it renders

1 the individual unconscious. That's basically  
2 it.

3 Q. So you haven't discussed with anyone  
4 the toxicity of midazolam itself and the pain  
5 that it can cause to an inmate?

6 A. No.

7 Q. Has the Execution Team been trained to  
8 recognize the signs of a paradoxical effect?

9 A. What's a paradoxical effect?

10 Q. So a paradoxical effect with midazolam  
11 is a known phenomenon where instead of  
12 rendering an inmate sedated, which is what  
13 midazolam is used for, sedation, instead, it  
14 renders them agitated and hyperalert and  
15 aware.

16 That you didn't know what a  
17 paradoxical effect is suggests to me that  
18 you've never heard that phrase before today?

19 A. I may have heard it, but I don't know  
20 that I remembered the exact definition of it  
21 or your definition of it.

22 To answer your question, again, the  
23 Warden for the -- to do the conscious check,  
24 I would assume and think that it's a  
25 reasonable -- or assumption that if he does a

1 conscious check and the inmate is  
2 hyper-exaggerated or agitated that he would  
3 know that and say that the inmate is not  
4 conscious.

5 Q. Or that he --

6 A. Or that he is conscious.

7 Q. Right.

8 A. I'm sorry, yes.

9 Q. What safeguards, if any, are in place  
10 to deal with a paradoxical effect?

11 A. Nothing other than the fact that the  
12 -- the offender is secured. He is secured to  
13 the gurney and -- but there's none that I'm  
14 aware of.

15 Q. I want to turn now to asking you some  
16 questions about Counts 4 and 5 of our  
17 Complaint that have survived the Motion to  
18 Dismiss, okay?

19 A. Okay.

20 Q. We have made allegations respecting  
21 access of attorneys to the Courts during an  
22 execution, should an emergency arise. And so  
23 as the Commissioner of Correction, I just  
24 want to ask you some questions related  
25 basically to activities that attorneys are or

1 are not allowed to engage in.

2               It is my understanding that the  
3 protocol allows for one Defense Counsel  
4 witness; is that correct?

5 A.       I believe that's correct.

6 Q.       Why is the inmate limited to one  
7 Defense Counsel witness?

8 A.       Well, the number of people that's in  
9 the area, I -- there's -- it's -- it's  
10 crowded. And -- and I know that we have to  
11 limit the number of individuals in that area.  
12 That's basically it.

13 Q.       And the Defense Counsel witness is  
14 required to observe in the official witness  
15 room; is that correct?

16 A.       Yeah, the -- the counsel -- legal  
17 counsel for the offender and I believe the  
18 Attorney General is in the execution chamber  
19 for a period of time until right before -- if  
20 I'm remembering correctly -- after the IVs  
21 have been inserted, they are -- they leave  
22 the execution chamber and go to the witness  
23 area to observe the execution.

24 Q.       So the Defense Counsel witness is  
25 permitted to be present during the insertion

1 of the IVs; is that correct?

2 A. I believe that's correct.

3 Q. And when they are present during the  
4 insertion of the IVs, they are able to  
5 observe those members of the Execution Team  
6 who are inserting the IV, correct?

7 A. Yes.

8 Q. And you feel enough confidence in  
9 Defense Counsel witnesses that you can trust  
10 them to not identify those members of the  
11 Execution Team who have inserted the IVs,  
12 correct?

13 A. I would hope so.

14 Q. There have been six executions in  
15 Tennessee, correct?

16 A. I believe that's correct. I --

17 Q. Are you --

18 A. -- I don't know exactly how many.

19 Q. Do you know of any Defense Counsel  
20 witness who has observed an execution who has  
21 later revealed the identities of the  
22 Execution Team members that he or she has  
23 observed?

24 A. Not that I'm aware of.

25 Q. I actually should say "he." There's

1 never been a she.

2                 After the Defense Counsel witness and  
3 the Attorney General witness exit the room,  
4 they go to the official witness room,  
5 correct?

6 A.            Correct.

7 Q.            Along with the media, correct?

8 A.            Correct.

9 Q.            And I'm going to show you, just for  
10 convenience purposes, out of my notebook  
11 Page 10 of the January 8, 2018 lethal  
12 injection protocol. Does that appear to be a  
13 diagram of the -- well, what's that a diagram  
14 of?

15 A.            Yeah, it appears to be the death watch  
16 area and the death chamber, along with the  
17 garage and other areas in that building.

18 Q.            So surrounding the execution chamber,  
19 there appear to be a number of rooms where  
20 there are windows into the execution chamber;  
21 is that correct?

22                 And could you identify what those  
23 rooms are?

24 A.            Yes. Here (indicating).

25 Q.            And what is that, when you say "here,"

1 what is that?

2 A. That's the official witness room as  
3 identified in this diagram. And then the  
4 victim's family room here (indicating) in  
5 this location with a window directly in front  
6 of the gurney.

7 Q. Adjacent to the official witness room,  
8 there appears to be an unidentified room; is  
9 that correct?

10 A. That's correct.

11 Q. What is that room?

12 A. That's an electrical room.

13 Q. Okay. So there's electrical equipment  
14 in there?

15 A. There is.

16 Q. Is there a window from that room into  
17 the execution chamber?

18 A. No, there's not.

19 Q. Okay. Within the official witness  
20 room, is there a telephone?

21 A. I don't think so. And, again, it  
22 could be, but I don't think so.

23 Q. Okay.

24 A. Sorry. That's your pen.

25 Q. No, no worries.

1           If a problem were to develop -- if a  
2 Defense Counsel witness were to observe what  
3 he or she believed to be a violation of his  
4 or her client's Constitutional rights, once  
5 they are in the official witness room, what  
6 recourse do they have to contact the Court to  
7 advise the Court of what they believe to be a  
8 Constitutional violation?

9       A.     I don't know of any immediate method  
10 that they would have, other than the  
11 individuals in that room, the Attorney  
12 General -- or the people from their office.  
13 I don't know of any direct line that would be  
14 available for a call --

15     Q.     Would --

16     A.     -- unless there was -- again, unless  
17 there was a phone in there with a line. And  
18 I don't know. I'd have to check on that.

19     Q.     Would it violate the safety and  
20 security of the institution to place a  
21 landline in the official witness room that  
22 would allow Defense Counsel to contact the  
23 Court?

24     A.     I wouldn't think so. I think the  
25 Department would be willing to work with, you

1 know, anyone to try to make sure people have  
2 access to their -- or you would have -- or  
3 the attorneys would have access or whoever.

4 But I don't know that there's not a phone  
5 there. I would need to check that.

6 Q. So I will tell you that the Warden  
7 testified yesterday that there's a phone  
8 there, but he doesn't know if there's an  
9 outside line.

10 A. Okay.

11 Q. But the Warden's testimony was that he  
12 wouldn't permit Defense Counsel to call  
13 outside the institution. But as  
14 Commissioner, you could override that  
15 decision, correct?

16 A. Yes.

17 Q. If Defense Counsel needed to leave the  
18 execution chamber in order to contact the  
19 Court, would they be permitted to leave the  
20 -- the official witness room?

21 A. Yes.

22 Q. How far -- how long would it take the  
23 lawyer to exit the official witness room and  
24 reach the administration building at  
25 Riverbend Maximum Security Institution?

1 A. Approximately, I would say, maybe two  
2 minutes, a minute, two minutes.

3 Q. Would they need to have an escort?

4 A. Yes.

5 Q. And would they need to wait for that  
6 escort to arrive to take them?

7 A. Yes.

8 Q. So though it's --

9 A. Well, assuming there was -- there  
10 would not be an escort there available  
11 somewhere onsite.

12 Q. And there's no provision in the  
13 protocol for that to happen?

14 A. There is not provision, no.

15 I would say that I'm assuming that  
16 you're saying you would have to go up front  
17 to use the phone. If there's a phone there  
18 that has access to a switchboard at the  
19 facility, a call could be placed. Just  
20 because it's not a dedicated outside line --  
21 they're available.

22 Q. Right.

23 A. And, again, I -- personally I wouldn't  
24 be opposed to working to try to make sure  
25 that the attorneys had access to make a call

1 if they needed to make a call.

2 Q. And would that include installing a  
3 telephone with those capabilities if one is  
4 not there currently?

5 A. Uh-huh, it -- it could include that or  
6 other options.

7 Q. Would another option include allowing  
8 the attorneys to bring a cell phone with them  
9 to the official witness room?

10 A. I don't know that I would want someone  
11 bringing a cell phone in. It's possible that  
12 -- it's possible that the Department could  
13 provide a phone that would be available to be  
14 used.

15 Q. So the Department -- if I'm hearing  
16 you right, maybe the Department could provide  
17 an approved cell phone as opposed to a  
18 personal cell phone?

19 A. Yeah, I -- I would certainly not be  
20 opposed in any way to providing the attorneys  
21 access to communications that they would need  
22 to do their job.

23 Q. Thank you.

24 It is 4:20, and we've been going five  
25 hours and 11 minutes. We're going to go off

1 the record and I'm going to consult with my  
2 cocounsel and then we're going to wrap up,  
3 okay?

4 A. Okay.

5 (Brief recess observed.)

6 BY MS. HENRY:

7 Q. Okay. It's 4:34, and we're back on  
8 the record. Let me start my timer again.

9 Really, just a few follow-up,  
10 clarifying questions.

11 Commissioner, would it be possible for  
12 the Department to make provisions for two  
13 Defense Counsel witnesses to be present  
14 during an execution so that if something goes  
15 wrong, one person could contact the Court  
16 while the other person could remain  
17 observing?

18 A. I think that's something we could  
19 consider.

20 Q. Okay. Thank you.

21 Earlier I asked -- you mentioned the  
22 Executioner watching the injection site, the  
23 IV injection site, through the pan, zoom,  
24 tilt camera. Do you know whether or not it  
25 would be possible to run a separate video

1 line into the official witness room so that  
2 the attorneys could observe the IV injection  
3 site during an execution?

4 A. That's, as you've said -- is currently  
5 not available. And at this point, I'm not  
6 sure I could do that or that I would do that.

7 Q. Okay. And is -- for what reason?

8 A. Well, I would just say there's more  
9 people in that area than just the counsel for  
10 the -- for the offender and the Attorney  
11 General. And it's something that I would  
12 have to consider and talk to my Legal team  
13 about. And I would question whether or not  
14 it's -- it's really necessary. But, again,  
15 it's something that I -- I don't think I  
16 would be prepared right now to give you a  
17 final answer on that.

18 Q. I just want to make sure I'm  
19 understanding the answer is that your  
20 concerns aren't so much about safety and  
21 security of the institution, but more about  
22 emotional harm that could --

23 A. Well, I would have --

24 Q. -- come from observing that?

25 A. -- different concerns. I see that --

1 there's a multitude of issues that I would  
2 have to consider as the Commissioner in  
3 conjunction with consultation with my  
4 attorneys, and -- and with the people of the  
5 Department as well as the people at the  
6 facility --

7 Q. Okay.

8 A. -- before I could give you a definite  
9 answer on that.

10 Q. Okay. Would it be possible to -- not  
11 whether it would be advisable or not. Is it  
12 physically possible within the institution to  
13 connect such wiring and install a monitor?

14 A. I'm assuming that it is physically  
15 possible, although I would have to confirm  
16 that with our maintenance and technical folks  
17 at the facility. But I'm -- I'm sure  
18 almost -- in today's age, almost anything is  
19 possible.

20 Q. Would it be possible to mount a camera  
21 in the Executioner's room in such a way that  
22 -- and not whether you would approve it, but  
23 if it's possible -- to mount a camera in such  
24 a way that Defense Counsel would be able to  
25 observe the Executioner push the syringes

1 without showing the face of the Executioner?

2 A. I'm not sure that that's possible.

3 Q. And why not?

4 A. I mean, there's movement in that room.

5 Depending on the position of the Executioner,

6 depending on what happened in the room that

7 would cause him to move or to bend down or to

8 shift, I -- again, I -- it's something that,

9 you know, if you're asking me is it possible,

10 it's -- I'm sure that it's possible. I don't

11 know that it's something that I would want to

12 do without being forced to do.

13 Q. Okay. We have been at this since 9:30

14 this morning. It is 4:40, and five hours and

15 15 minutes into questioning, so I know it's

16 kind of hard to say think back over the whole

17 day and if there is something you'd like to

18 change, but since we aren't -- we may not

19 have another opportunity to get together and

20 discuss these issues, is there an answer that

21 you gave today that you would like to go back

22 and modify, add to, or change?

23 A. Not that I'm aware, no. Not that I

24 recall.

25 Q. I know from our deposition of Mr. Mays

1 yesterday that the Attorney General's Office  
2 does not wish to waive signature, so we will  
3 provide you with a copy and ask you to review  
4 your deposition and make any -- you can't  
5 change what you said, but if there are  
6 typographical errors, you can definitely  
7 change them.

8 A. Sure.

9 Q. And in that deposition, there'll be a  
10 list of the things that you agreed to go back  
11 and talk to General Counsel -- and we'll just  
12 ask -- I'm not going to try and repeat those  
13 right now, because I might get it wrong.

14 A. Okay.

15 Q. So we'll just ask you to review those  
16 materials that you would be on the record to  
17 look for and to provide those through  
18 Mr. Sutherland.

19 At this point, Plaintiffs don't have  
20 any further questions. We might have some  
21 follow-ups to anything Mr. Sutherland or Mr.  
22 -- Ms. Davis wish to ask.

23 MS. HENRY: Any questions?

24 MR. SUTHERLAND: I don't have any  
25 questions.

1 BY MS. HENRY:

2 Q. Thank you very much for your time. It  
3 was a pleasure meeting you. We will take our  
4 one certified question to the Court, and if  
5 there is a need to have further discussions,  
6 Mr. Sutherland will be in contact with you to  
7 schedule that.

8 Thank you.

9 A. Thank you.

10 MS. HENRY: We're off the record  
11 at 4:41.

12 FURTHER DEPONENT SAITH NOT.

13 (Proceedings concluded at  
14 4:41 p.m.)

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1 REPORTER'S CERTIFICATE

2 I certify that the witness in the  
3 foregoing deposition, TONY PARKER, was by me  
4 duly sworn to testify in the within entitled  
5 cause; that the said deposition was taken at  
6 the time and place therein named; that the  
7 testimony of said witness was reported by me,  
8 a Shorthand Reporter and Notary Public of the  
9 State of Tennessee authorized to administer  
10 oaths and affirmations, and said testimony,  
11 Pages 8 through 280 was thereafter  
12 transcribed into typewriting.

13 I further certify that I am not of  
14 counsel or attorney for either or any of the  
15 parties to said deposition, nor in any way  
16 interested in the outcome of the cause named  
17 in said deposition.

18 IN WITNESS WHEREOF, I have hereunto  
19 set my hand this 8th day of June 2018.

20

21

22

*Carissa L. Boone*

23

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Carissa L. Boone, LCR No. 382  
My License Expires: 6/30/2018

1

E R R A T A

2

I, TONY PARKER, having read the  
foregoing deposition, Pages 8 through 280,  
taken June 5, 2018 do hereby certify said  
testimony is a true and accurate transcript,  
with the following changes (if any):  
5

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Tony Parker

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My Commission Expires: \_\_\_\_\_

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